

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-2567

B  
PAS

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
UNITED STATES OF AMERICA

Plaintiff-Appellee

-against-

Docket No. 74-2567

RAFAEL MELLAFE, indicted herein as  
RAFAEL LIKA

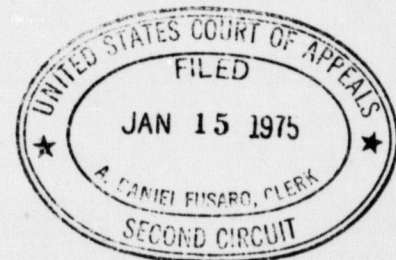
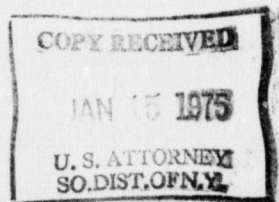
Defendant-Appellee

-----X

APPENDIX

JOHN C. COMBETT  
Attorney for Defendant-Appellant  
Office & P.O. Address  
66 Court Street  
Brooklyn, New York 11201

PAUL J. GURRAN



3

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CRIMINAL DOCKET  
STATES DISTRICT COURT

JUDGE STEWART

73CRIM. 751

Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Jeffrey Harris, AUSA 264-6350
( See over for defendants)	
	For Defendant:

(07)	STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
	J.S. 2 mailed	Clerk				
	J.S. 3 mailed	Marshal				
	Violation	Docket fee				
	Title 21					
	Sec. 173,174,846 & 963					
	Conspiracy to import and distribute Cocaine.					
	( One Count)					

DATE	PROCEEDINGS
8-3-73	Filed Indictment Ordered Sealed. Ward, J. Bench Warrants ordered. Bench Warrants issued.
8-28-73	Indictment ordered unsealed. Wyatt, J. Case assigned to Judge Stewart for all purposes. (Related to 73Cr685) Wyatt, J.
9-4-73	MENDOZA- Filed defts. financial affidavit.
9-28-73	MANUEL ABDO CHACON- Filed Warrent for arrest of defendant with copy of indictment. affdvt. of Jorge Iaro, affdvt. of Gerald A. Feffer attached.
9-10-73	JAIME MENDOZA-Filed CJA appoint. of counsel, Robert Mitchell, 51 Chambers St., N.Y. 10007.

A



PROCEEDINGS

JAMIE MENDOZA

2 JORGE SARAVIA

3 JOSE KENNETH PENARANDA

4 JORGE BARO

5 SERGIO MACHIN

6 ALBERTO LOPEZ- a/k/a El Viejo ✓ 7-10-74

7-10-74

7 ENRIQUE BARRERA- a/k/a Manolo

8 MANUEL ABDO CHACON-a/k/a Manuel Garcia a/k/a Manolito

9 GILBERT BORENSZTEJN- a/k/a El Gordo

10 MILTON GRIJALVA

11 RAFAEL LIRA 11-26-74

12 JOSE ALHAMBRA- a/k/a Pepe

13 JOHN DOE- a/k/a Rolando

14 JOHN DOE- a/k/a Christian, a/k/a El Flaco.

15 JOHN DOE- a/k/a El Chino

16 JOHN DOE- a/k/a Gonzalez

17 JOHN DOE- a/k/a Roberto

Sep-10-73 ALL DEFENDANTS- Court directs entry of not guilty plea - referred to Judge Stewart.--  
Duffy, J.

5-73 MENDOZA- Filed the following papers received from S.D. of Florida: Order of removal  
and Magistrates papers including appearance bond in the sum of \$50,000. PRB

Oct-12-73 Filed Governments notice of readiness for trial.

t.29-73 MENDOZA--Filed warrant for arrest of said deft. and marshal's return.  
Executed on Aug.10,1973.

ov.19-73 MENDOZA

BARO

SARAVIA--Filed govts. notice of readiness for trial.

ov.19-73 BARRERA

BORNSZTEJN--Filed govts. notice of readiness for trial.

v.21-73 BARRERA--Filed govt's. W/H/C to produce said deft. on Nov.21,1973 at

10:30am for a pre trial conference(unexecuted). (unsigned by Clerk)

v.21-73 Filed affdt. of Jeffrey Harris(govt.) re: above writ for deft. Barrerra.

B

## PROCEEDINGS

Nov. 29-73 E. BARRERA--Filed govt's. affdt. (by Bancroft Littlefield, jr.) for a  
 W/H/C Writ issued. ret. Dec. 5, 1973.  
 Dec. 10-73 Filed the following papers submitted by Magistrate Faby--Docket Entry Sheets(a)  
 Magistrate's Warrant of Arrest, Disposition Sheet, Appearance Bond  
 Jorge Saravia, in the sum of \$100,000.00 and Temporary Commitments  
 Feb. 4-74 BARRERA - Filed Affidavit for Writ of Habeas Corpus ad Prosequendum.  
 Feb. 6-74 BARRERA - Filed true copy of Writ issued - Clerk.  
 Feb. 6-74 BARRERA - Filed Marshal's return -- writ returned unexecuted. Deft. placed at  
 confinement Atlanta, Ga. - New Writ to issue.  
 Feb. 7-74 BARRERA - Filed Affidavit for Writ of Habeas Corpus Ad Prosequendum  
 Feb. 25-74 BARRERA - Filed Affidavit for Writ of Habeas Corpus AD Prosequendum  
 Mar. 5-74 ALBERTO LOPEZ - Filed Notice of Motion, for an Order dismissing the Indictment  
 and reviewing bail conditions etc.  
 Feb. 22-74 ENRIQUE BARRERA - Filed Marshal's return --Writ returned unexecuted Prisoner  
 in hospital U.S.P. Atlanta, Ga.  
 Mar. 12-74 ENRIQUE BARRERA - Filed Motion to Dismiss - For failure to prosecute for double  
 jeopardy and for Severance and Immediate Trial.  
 3-12-74 Filed Attorney's Amended Affirmation  
 Apr. 5-74 ENRIQUE BARRERA--Filed defts. affdt. and notice of motion for an order  
 of dismissal of indictment, etc. as indicated.  
 4-16-74 Filed for Deft. Gilbert Bornsztejn - Memorandum in support of motions for pre-trial  
 Relief.  
 4-16-74 GILBERT BORNSTZEJN - Filed Notice of Motion for Dismissal of Indictment, Severance,  
 Bill of Particulars & Disc-overy, Immediate Trial, returnable 4/22/74 at 4:00P.M.  
 4-25-74 Filed Government Affidavit and Memorandum of Law in Response to Defendants pre-trial  
 Motions.  
 5-6-74 ENRIQUE BERRERA - Filed Supplemental Demand for a Bill of Particulars.  
 5-10-74 JORGE SARAVIA - Filed waiver of constitutional rights.  
 5-10-74 JOSE KENNETH PENARANDA - Filed Notice of Motion returnable 6/13/74 at 10AM  
 for an order dismissing the Indictment.  
 5-11-74 ALBERTO LOPEZ - Filed Waiver of Constitutional Rights  
 5-10-74 SARAVIA (atty present) withdraws Plea of not Guilty and now PLEADS GUILTY to this  
 Indictment. P.S.I. ordered. Sent. adjd. Sine Die. Bail continued - STEWART, J.  
 on 5-11-74 LOPEZ (atty present) Pleads GUILTY to this Indict. P.S.I. ordered. Sent. adjourned  
 to 7/10/74 9:30 A.M. Bail continued - STEWART, J.



## PROCEEDINGS

- 4-74 ALBERTO LOPEZ - Filed CJA 21 Authorization of Gerardo Sanchez Ballate, interpreter, 717 W. 177th St., N.Y. - STEWART, J. (orig. filed AOWash, D.C.)
- 6-14-74 Filed Copy of CJA 21 re: above Approving Authorization of interpreter.
- 6-14-74 Filed ALBERTO LOPEZ - CJA 21 Authorization of Interpreter Gerardo Sanchez Ballate, 717 N.Y. - STEWART, J.
- 6-14-74 ALBERTO LOPEZ - Filed copy of CJA 21 Authorizing Payment on the above
- 6-20-74 JAMIE MENDOZA - Filed Waiver of Constitutional Rights.
- 6-19-74 MENDOZA - (atty present) (Mitchell) withdraws Plea of Not guilty and Plead GUILTY to the P.S.I. ordered. Sentence adjourned to 8/22/74 10AM Bail continued - STEWART, J.
- 6-26-74 LOPEZ - (atty present) Application for reduction of bail granted. Bail \$15,000, P.R.B. secured by \$5,000 Cash. Bail limited extended to Jersey City, N.J. - STEWART, J.
- 6-26-74 BARO (atty present) withdraws plea of Not Guilty and Now Pleads GUILTY to the Indictment. P.S.I. ordered. Sent. adjd. to 9/20/74 10AM Bail continued at \$150,000 P.R.B.
- 6-27-74 BARO - Filed Rights of Waiver of his constitutional rights.
- 6-26-74 LOPEZ - Filed CJA 21 Authorization of Gerardo Sanchez Ballate 717 W. 177th St., N.Y. Interpreter - STEWART, J. (original mailed AO Wash, D.C.)
- 6-26-74 LOPEZ Filed copy of CJA 21 approving payment re: above.
- 6-1-74 John Die, a/k/a Christian- Filed Warrent for Arrest  
Filed affdt of James E. Nesland  
Filed affdvt. of Jorge Baro  
all 3 documents re extradition of defendant from Chile
- 10-74 ALBERTO LOPEZ- Filed JUDGMENT that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of TEN (10) YEARS. Pursuant to provisions of T. 21, U.S. Code, Section 846, the defendant is placed on Special Parole for a period of THREE (3) YEARS to commence upon expiration of confinement. Defendant to be given credit for time served. -- Stewart, J. ----- copies issued.
- 17-74 PENARANDA - Application for Reduction of Bail - DENIED - STEWART, J.
- 8-74 Lopez Filed comm. [unclear], Deft delivered to [unclear] [unclear] Hgt.
- 8-74 LOPEZ - Filed CJA 21 Authorizing Gerardo Ballate, 717 W. 177th St. (Interpreter) AO Wash, D.C. STEWART, J.
- 8-74 LOPEZ - Filed copy CJA 21 approving payment re: above  
Filed Transcript of record of proceedings, dated [unclear] 1974
- 8-29-74 Filed Govt. Affidavit in opposition of deft's pending motion dismissing Indict.
- 9/74 Filed Government's Memorandum of Law in opposition to Deft's Motion to dismiss the Ind.
- 8-74 Filed Govt. Supplemental Bill of Particulars.



DATE	PROCEEDINGS	Date of Judgment
8-15-74	LOPEZ - Filed CJA 20 Copy 2 appointing Alvin Geller Counsel, - STEWART, J. (Original mailed to AO Wash.D.C.)	
9-4-74	Filed Govt's. Memorandum in support of Admissibility of Evidence of other contemporaneous narcotics transactions engaged in by Rafael Lira	
9-10-74	Deft. Lira's (Mellafe) application to have atty. Ivan Fisher removed as defts' counsel granted.	
9-19-74	Enrique Barrera - (Produced on writ) atty. present. Interpreter Gerard Sanchez sworn Gilbert Bornstein - Produced on writ) atty present. Interpreter Joelle McCall sworn Raphael Lira - (no atty.) Marie Cardenas interpreter sworn. All motions and writs adj. to 9/25/74 at 10AM - STEWART, J.	
10-27-74	Filed Affidavit of James E. Nesland in opposition to deft's motion for an order dismissing indictment upon the ground that the Court lacks jurisdiction	
10-27-74	Filed Government's Memorandum of Law in opposition to Rafael Lira's Motion for dismissal of the Indictment of or a hearing thereon.	
11-2-74	Filed (LIRA) documents received from Mag. Raby -- Docket Entry Sheet; Indict. Warrant; Disposition Sheet; Appointments of Counsel.	
11-2-74	Filed (PENARADA) documents received from Mag. Raby -- Docket Entry Sheet; Indt. Warrant; Disposition Sheet; Appointments of Counsel	
11-2-74	Filed Govt. Supplemental Affidavit of James E. Nesland to bring the attention of this court the recent decision of Hon. J.B. Weinstein USDJ, E.D.N.Y.	
11-9-74	Filed BARRERA - Financial Affidavit	
11-11-74	Filed Govt. Affidavit in further support of Govt's. position that deft Lira's pending motion to dismiss indict. should in all respects be denied.	
11-17-74	Filed ORDER thwt the Warden of The Federal Detention Center at West Street, make available to counsel for purposes of said conference, on 10/19/74 the use of the regular counsel room at said Detention Center, and it is further ORDERED that Deft. Rafael Mellafe Campos does not speak or understand the English language that counsel may be accompanied by and have present as interpreter during said conference MARIA ELENA CARDENAS, the Court appointed interpreter for deft. in this case. STEWART, J.	
11-17-74	Lopez Filed commitment & entered return, Deft delivered to <i>Louisburg 12-10-74</i>	
12-2-74	BORNSZTEJN - Filed CJA 21 Copy 2, Authorization of Mrs. Joelle McCall, interpreter, original mailed to AO Wash.D.C. for payment, - STEWART, J.	
12-1-74	BORNSZTEJN - Filed CJA 21 Copy 5 approving payment for interpreter.	
12-1-74	RAFAEL LIRA - Filed CJA 21 Copy 2, Authorizing Ms. Maria Cardenas, interpreter, original mailed AO Wash.D.C. for payment - Stewart, J.	
12-1-74	RAFAEL LIRA - Filed CJA 21 Copy 5, approving payment of interpreter.	

DATE	PROCEEDINGS	Date of Judgment
10-3-74	RAPHAEL MELLAFE - CAMPOS a/k/a LIRA - Motion argued. Dec. Reserved Trial set for	10/15/74
10-15-74	RAPHAEL LIRA - Counsel have agreed true name is Rafael Mellafe <del>Stewart</del> Jury trial begun before Stewart, J. Interpreter Maria Cardenas present	
10-16-74	Trial continued	
10-17-74	Trial continued	
10-18-74	Trial continued	
10-21-74	Trial continued	
10-22-74	Trial continued	
10-23-74	Trial continued	
10-24-74	Trial continued and concluded. Jury finds deft. GUILTY as charged Ct.1. P.S.I. ordered No bail. Sentence adjourned to 11/21/74 at 9:30 - STEWART, J.	
10-24-74	Filed Affidavit of Larry S. Greenberg in support of the deft's application to dismiss indictment etc.	
ct. 31-74	Filed governments affdt. of James Nesland. Deft. LIRA	
Oct. 30-74	Filed CJA 21 Copy 2/- Authorization of Maria Elena Cardenas, Interpreter, original mailed to AO Wash D. C. for payment. STEWART, J. Deft. LIRA	
Oct. 30-74	Filed CJA 21/Copy 5 - Authorizing payment for expert services - STEWART, J.	
Oct. 30-74	Filed CJA 21-Copy 2 Deft. LIRA- Authorization of Maria E. Cardenas Interpreter, original mailed to AO Wash.D.C. for payment - STEWART, J.	
Oct. 30-74	Filed CJA 21 Copy 5 - Authorizing payment for expert services - STEWART, J.	
6-74	Received Filed Transcript of record of proceedings, dated 6-10-74	
1-6-74	Lopez Filed Transcript of record of proceedings, dated 6-10-74	
1-6-74	Lopez Filed Transcript of record of proceedings, dated 6-11-74.	
1-6-74	Wondra Filed Transcript of record of proceedings, dated 6-19-74	
11-6-74	Bene Filed Transcript of record of proceedings, dated 6-26-74	
11-6-74	Lira Filed Transcript of record of proceedings, dated 8-10-74	
11-6-74	Filed Transcript of record of proceedings, dated 8-19-74	
11-12-74	Lira Filed Transcript of record of proceedings, dated 10-15/16, 17, 18, 21/22 23, 24, 1474	



PROCEEDINGS

11-21-74 RAFAEL MELLAFE - Indicted as RAFAEL LIRA - Sentence adjourned to 11/22/74, interpreter Maria Cardenas present - STEWART, J.

11-21-74 JOSE KENNETH PENARANDA, (atty present) Larry Greenberg. Hearing re: Toscanino matter held. Interpreter Edward Landrith present and sworn. Hearing concluded. Motion denied. Application for reduction of bail denied. - STEWART, J.

11-22-74 RAFAEL MELLAFE indicted as RAFAEL LIRE - Filed JUDGEMENT (atty present) The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS, pursuant to Section 841 of Title 21, USC, defendant is placed on Special Parole for a period of THREE (3) YEARS, to commence upon expiration of confinement. STEWART, J.

11-27-74 RAFAEL LIRA - Filed Notice of Appeal to U.S.C.A. for 2nd Circuit from final judgment entered on 11/22/74

12-10-74 Filed. Magistrate's Report  
 Wockett Entry Sheets  
 Magistrate's Warrant  
 Appearance Sheet  
 Appearance Bonds  
 Responary Certificate

1-11-75 COPY  
 1-11-75 T. L. D. 1-11-75  
 1-11-75

9

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :

-v- :

JAMIE MENDOZA, JORGE SARAVIA, :  
JOSE KENNETH PENARANDA, JORGE BARO, :  
SERGIO MACHIN, :  
ALBERTO LOPEZ, a/k/a El Viejo, :  
- ENRIQUE BARRERA, a/k/a Manolo, :  
MANUEL ABDO CHACON, a/k/a Manuel Garcia, :  
a/k/a Manolito, :  
- GILBERT BORNSZTEJN, a/k/a El Gordo, :  
- MILTON GRIJALVA, RAFAEL LIRA, :  
JOSE ALHAMBRA, a/k/a Pepe, :  
JOHN DOE, a/k/a Rolando, :  
JOHN DOE, a/k/a Christinn, a/k/a El Flaco, :  
JOHN DOE, a/k/a El Chino, :  
JOHN DOE, a/k/a Gonzalez and :  
JOHN DOE, a/k/a Roberto, :

Defendants. :

74-574  
INDICTMENT

73 Cr.

-----X  
The Grand Jury charges:

1. From on or about the 1st day of July, 1970  
and continuously thereafter up to and including the date  
of the filing of this indictment, in the Southern District  
of New York and elsewhere, JAMIE MENDOZA, JORGE SARAVIA,  
JOSE KENNETH PENARANDA, JORGE BARO, SERGIO MACHIN, ALBERTO  
LOPEZ, a/k/a El Viejo, ENRIQUE BARRERA, a/k/a Manolo,  
MANUEL ABDO CHACON, a/k/a Manuel Garcia, a/k/a Manolito,  
GILBERT BORNSZTEJN, a/k/a El Gordo, MILTON GRIJALVA,  
RAFAEL LIRA, JOSE ALHAMBRA, a/k/a Pepe JOHN DOE, a/k/a  
Rolando, JOHN DOE, a/k/a Christian, a/k/a El Flaco,  
JOHN DOE, a/k/a Roberto, the defendants and others  
the Grand Jury known and unknown, unlawfully,



and knowingly combined, conspired, confederated and agreed together and with each other to violate prior to May 1, 1971, Sections 173 and 174 of Title 21, United States Code, and, on and after May 1, 1971, to violate Sections 812, 841(a)(1), 841(b)(1)(A), 951(a)(1) and 952 of Title 21, United States Code.

2. It was part of said conspiracy that prior to May 1, 1971 the said defendants unlawfully, wilfully, knowingly and fraudulently would import and bring into the United States large amounts of narcotic drugs from and through Ecuador, Peru and other countries to the Grand Jury unknown in violation of Sections 173 and 174 of Title 21, United States Code.

3. It was further a part of said conspiracy that prior to May 1, 1971 the said defendants unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

4. It was further a part of said conspiracy that on and after May 1, 1971 the said defendants unlawfully, wilfully and knowingly would import and bring into the United States from place outside thereof, to wit, Ecuador,

Peru, Chile, and France, Schedule II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 851(a)(1) and 952 of Title 21, United States Code.

5. It was further a part of said conspiracy that on and after May 1, 1971 the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

6. Among the means by which the defendants would and did carry out the aforesaid conspiracy were the following:

(a) ENRIQUE BARRERA recruited JORGE SARAIVIA, JOSE KENNETH PENARANDA and JAMIE MENDOZA, all diplomats from BOLIVA serving in consular posts in New York and Miami to bring cocaine into the United States using their diplomatic passports to clear United States customs without being searched.

(b) The aforementioned Bolivian diplomats would travel to Ecuador, Peru, Chile and France to pick up cocaine, and did bring approximately 225 kilograms of cocaine in the United States. Said Bolivian diplomats would meet with persons



designated by ENRIQUE BARRERA in said countries for the purpose of importing cocaine.

(c) Said diplomats met with defendants MANUEL ABDO CHACON, a/k/a Manuel Garcia, a/k/a Manolito, JOHN DOE, a/k/a El Chino, JOHN DOE, a/k/a Roberto and MILTON GRIJALVA in Guayaquil Ecuador; defendant JOSE ALHAMBRA, a/k/a Pepe, in Lima, Peru; defendants ALBERTO LOPEZ a/k/a El Viejo, JOHN DOE a/k/a Christian, a/k/a El Flaco and RAFAEL LIRA in Santiago Chile, and defendants JOHN DOE, a/k/a Gonzalez, JOHN DOE, a/k/a Rolando and GILBERT BORNSTEIN in Paris, France.

#### OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about October or November, 1970 defendants JORGE SARAIVIA, JORGE BARO and JAMIE MENDOZA left New York City for Guayaquil, Ecuador.
2. In or about October or November of 1970 defendants JORGE SARAIVIA, JORGE BARO and JAMIE MENDOZA delivered approximately 10 kilograms of cocaine to defendant ENRIQUE BARRERA in the vicinity of West 87th Street and West End Avenue, New York, New York.
3. In or about January, 1971 defendants JORGE  
Ecuador.

4. In or about January, 1971 defendants JORGE BARO and JAMIE MENDOZA delivered approximately 10 kilograms of cocaine to defendant ENRIQUE BARRERA in the vicinity of West 87th Street and West End Avenue, New York, New York.

5. In or about December, 1970 or January, 1971 defendants JORGE BARO and JAMIE MENDOZA delivered 10 kilograms of cocaine to defendant ENRIQUE BARRERA in New York, New York.

6. In or about May, 1971 defendant JORGE BARO delivered 10 kilograms of cocaine to defendant SERGIO MACHIN in the vicinity of West 87th Street and West End Avenue, New York, New York.

7. In or about July, 1971 defendants JORGE BARO and JAMIE MENDOZA departed New York City for Paris, France.

8. In or about July, 1971 defendants JORGE BARO and JAMIE MENDOZA delivered approximately 50 kilograms of cocaine to defendant ENRIQUE BARRERA in the vicinity of 1st Avenue and East 69th Street, New York, New York.

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9. In or about July or August, 1971 defendants JORGE BARO, JORGE SARAVIA and JOSE KENNETH PENARANDA arrived in Santiago, Chile.

10. In or about July or August, 1971 defendants JORGE BARO, JORGE SARAVIA, JOSE KENNETH PENARANDA, ALBERTO



LOPEZ, a/k/a El Viejo, JOHN DOE, a/k/a Christian, a/k/a, El Flaco, and RAFAEL LIRA met in Santiago, Chile.

11. In or about July or August, 1971 defendants JORGE BARO, JORGE SARAIVIA and JOSE KENNETH PENARANDA delivered 15 kilograms of cocaine to defendant ENRIQUE BARRERA in the vicinity of East 59th Street and First Avenue, New York, New York.

12. In or about September, 1971 defendant JORGE BARO departed New York City for Paris, France with \$200,000.

13. In or about September, 1971 defendants JORGE BARO, JORGE SARAIVIA and JOSE KENNETH PENARANDA delivered \$200,000 to defendant JOHN DOE, a/k/a Gonzalez in Paris, France.

14. On or about March 31, 1973 defendant ALBERTO LOPEZ, a/k/a El Viejo arrived at Howard Johnsons in Secaucus, New Jersey.

15. In or about April, 1973, defendant ALBERTO LOPEZ, a/k/a El Viejo, delivered \$35,000 to defendant JORGE BARO in Miami, Florida.

16. On or about June 3, 1973, defendant ALBERTO LOPEZ, a/k/a El Viejo, arrived at John F. Kennedy Airport in New York City.

17. On or about June 5th or 6th, 1973 defendant ALBERTO LOPEZ, a/k/a El Viejo, arrived in Miami, Florida with \$20,000.

13. On or about July 2, 1973, defendant JORGE BARO delivered \$55,000 to defendant MILTON GRIJALVA in Guayaquil, Ecuador.

19. On or about July 3, 1973, defendant MILTON GRIJALVA delivered 10 kilograms of cocaine to the defendant JORGE BARO in Guayaquil, Ecuador.

20. On or about July 4, 1973, defendant JORGE BARO arrived in the vicinity of the Holiday Inn, West New York, New Jersey with 10 kilograms of cocaine.

21. On or about July 4, 1973, defendant ALBERTO LOPEZ, a/k/a El Viejo, arrived in the vicinity of the Holiday Inn, West New York, New Jersey.

(Title 21, United States Code, Sections 173, 174, 846 and 963.)

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FOREMAN

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PAUL J. CURRAN  
United States Attorney



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA

-against-

RAFAEL LIAA, etal

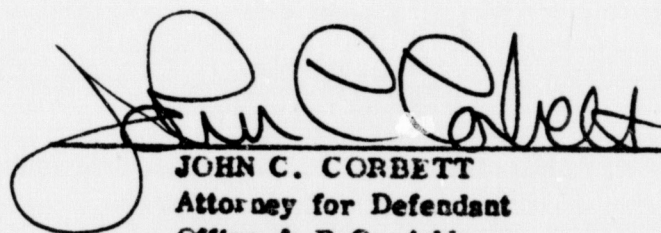
Defendant  
----- X

NOTICE OF APPEAL

73Ch751

Notice is hereby given that RAFAEL LIAA, a/k/a RAFAEL MELLAFE CAMPOS, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 22nd day of November, 1974.

DATED: November 26th, 1974



JOHN C. CORBETT  
Attorney for Defendant  
Office & P.O. Address  
66 Court Street  
Brooklyn, New York 11201

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

(CES, JR.)

-against-

NOTICE OF  
MOTION

RAFAEL LIRA, etal

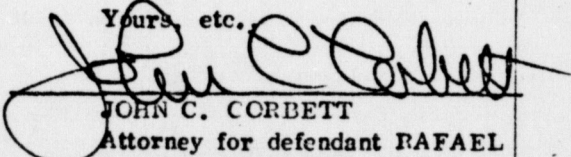
Defendants  
-----X

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of JOHN C. CORBETT, ESQ., duly sworn to the 23rd day of September, 1974, the affidavit of RAFAEL MELLAFE CAMPOS, indicted herein as RAFAEL LIRA, sworn to the 19th day of September, 1974, the translation thereof by MARIA ELENA CARDENAS, sworn to the 21st day of September, 1974, the exhibits attached hereto, and on all the proceedings heretofore had herein, the defendant, RAFAEL MELLAFE CAMPOS, indicted herein as RAFAEL LIRA, will move this Court at a motion term to be held before HON. CHARLES E. STEWART, JR., United States District Judge for the Southern District of New York, on the 25th day of September, 1974 at 10:00 a.m. in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rule 12, Federal Rules of Criminal Procedure, dismissing the indictment herein as to him on the grounds that he was deprived of his rights under the Fourth Amendment to the Constitution of the United States by being kidnapped and brought into this jurisdiction without his consent and that he has been denied due process of law by this prosecution.

DATED: Brooklyn, New York  
September 23rd, 1974

Yours, etc.

  
JOHN C. CORBETT  
Attorney for defendant RAFAEL  
MELLAFE CAMPOS, indicted  
herein as RAFAEL LIRA  
Office & P.O. Address  
66 Court Street  
Brooklyn, New York 11201

TO: PAUL J. CURRAN  
United States Attorney  
Southern District of  
New York  
Foley Square, New York



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

-against-

AFFIDAVIT

RAFAEL LIRA et al

Defendants  
-----X

STATE OF NEW YORK)

)SS.:

COUNTY OF KINGS )

JOHN C. CORBETT, being duly sworn, deposes and says:

I am assigned counsel for the defendant RAFAEL MELLAFE  
CAMPOS, indicted herein as RAFAEL LIRA.

This affidavit is made in support of this defendant's motion  
to dismiss the indictment herein as to him on the grounds that he was  
kidnapped and brought forcibly into the United States for the purpose of  
this prosecution by agents of the United States Government in violation of  
his right to due process and further that he was carried into the United  
States in violation of his rights under the Fourth Amendment to the Consti-  
tution of the United States.

Because your deponent undertook to accept this assignment  
on September 20th, 1974, and the trial is scheduled to go forward on  
September 25th, the defendant's own affidavit setting forth his story is in  
Spanish and partially typed and partially hand printed by him. An English  
translation by MARIA ELENA CADENAS, a recognized translator of the  
English and Spanish languages, sworn to as to its accuracy is appended to  
these papers. The necessity of serving the United States Attorney with  
these papers on Monday, September 23rd, 1974 so that he might have time  
to reply, did not allow sufficient time to prepare the defendant's affidavit in  
English and to bring it to him for signature.

Briefly, however, the defendant's story is the same as many  
other defendants from South America whose prosecutions are pending in the  
United States District Courts for the Eastern and Southern Districts of New

York.

The defendant is a citizen of and a resident of the Republic of Chile. As he states in his affidavit he was engaged in the butcher business in Chile. He is a widower with 5 children, 53 years of age and was living at the time of his arrest with one JOIANDA LEON, in accordance with Chilean custom. On March 7, 1974 at 9:30 a.m. he was arrested by Chilean police on their statement that they wished information from him as to the whereabouts of a man called Christian Alvear wanted for questioning concerning arms traffic with Communists.

It should be mentioned at this point that the government of Salvatore Allende had been overturned and that Chile was then and still is being ruled by the Junta De Gobierno De La Republica De Chile, known in the American news media as the Junta.

His affidavit states that the arresting officers were led by a Lieutenant Gandolfi. He was eventually taken to a police station on Poblacion Rosita hemand where he was stripped, spread eagled, gagged and scourged. Electric shocks were applied to his genital organs, as he points out in his affidavit.

He states that there was conversation in English during this torture period and that Lieutenant Gandolfi told him that present during his torture were Charles Willis Cecil, Jr., and George Frangulis, agents of the American Government.

He was fed, returned to the station house and further tortured as well as offered human excrement to eat. He states that he was held 4 days and then brought to the Naval Prison Silva Palma where further torture was given to him. After several weeks he states that he was informed by the Naval Prosecutor that his person had been requested by the United States. He was photographed at the request of the North Americans. He states that he was obliged to sign a document that by order of the Ministry of the Interior he was to go free, and that he signed that in the presence of Cecil and Frangulis, the American agents.



After several days he was brought to Pudahuel Airport where he was examined by an American physician and put on a plane of Braniff Airlines with Chilean police and the ubiquitous agent Cecil. Attached is a Zerox copy of the Braniff Airlines passenger list as Exhibit "A". It should be noted that Charles Cecil appears at the head of the long list identified as the Embassy Group. On information and belief, the typed names following his are Chilean police. The names written on the list are the names of defendants including MELLAFE. Your deponent represents the individual named LAZZO in the Eastern District, and the others are also being prosecuted in various indictments.

Even the Junta broke its own laws when daiming to expel them from Chile. Under Decreto Ley No. 81 (Decree Law No. 81) of the one hundred first decrees issues by the Junta, the Junta reserved the right to expel from the country those perosns it believed to be a danger to their regime. These decrees were published by the Junta in November, 1973. Under Decree Law No. 81, MELLAFE was expelled from Chile. A copy of the decree of expulsion with a certified translation is attached as Exhibit "B". However the de cree of expulsion relies for its authority on Article 2 of Decree No. 81. Article 2 is translated and attached as Exhibit "C". It will be noted that the last sentence of Article 2 states as follows:

Those who are objects of these measures of expulsion or abandonment of the country shall be able to freely chose their place of destination.

Thus the agents of the United States cooperated with the Chilean police in breaking even Chilean law.

The whole circumstances under which MELLAFE was brought to this country are in violation of his rights as set forth herein and there is no doubt that under the doctrine of UNITED STATES v. TOSCANINO (Docket No. 73-2732) decided May 15, 1974 by the United States Court of Appeals for the Second Circuit that he is entitled to an evidentiary hearing

as to the conduct of the agents of the United States in securing his transmission to the United States for prosecution.

The facts are simple and I do not believe that they will be contravened by the Government. MELLAFE was arrested by Chilean police. We may assume that this arrest was at the request of the D.E.A. agents in Chile. Agents of the D.E.A. were present at the torturing of MELLAFE by Chilean police. A decree of expulsion was issued on May 2, 1974 by the Junta. In violation of Decree Law No. 61 which allows the Chilean arrested party the choice of destination, the defendant was handed over to American agents in Chile and transported to the United States accompanied by Chilean police, a D.E.A. agent and a physician. Most of these facts have been admitted by the Government in its opposing affidavit to a similar motion in UNITED STATES V. CHOY, 73CR1098 and 74Ch465, a case pending in this Court before HON. LEE P. GAGLIARDI, United States District Court Judge. Choy was one of the persons brought to the United States on the same plane with MELLAFE.


We cannot close our eyes to the fact that this defendant, and the others as well, were brought to the United States against their will in violation of Chilean law as well as their Constitutional rights. This was even common news in Chile as may be seen from the newspaper article published in the Junta controlled press attached as Exhibit "D" with a certified translation. Certainly our agents worked in Chile to remove these people to the United States.

It is the contention of MELLAFE that these activities of the agents of the Government, working with Chilean police, violated his Constitutional rights.

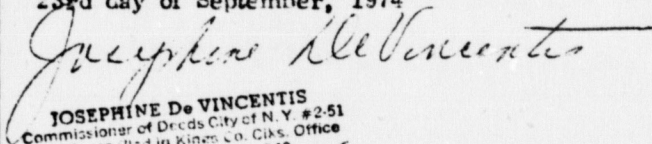
WHEREFORE, it is respectfully requested that this Court order a hearing under the principles of UNITED STATES v. TOSCANINO supra, and that the hearing the indictment be dismissed as to



RAFAEL MELLAFE CAMPOS.

  
JOHN C. CORBETT

Sworn to before me this  
23rd day of September, 1974

  
JOSEPHINE De VINCENTIS  
Commissioner of Deeds City of N.Y. #2-51  
Certificate filed in Kines. Co. Clks. Office  
New York County Clks. #40  
Commission Expires June 23, 1976

9/20/74

My name is RAFAEL ENRIQUE MELLAFE CAPOS, 53 years old, born in Santiago, Chile on November 21, 1921. Widower. 5 children.

I was arrested on March 7, 1974 at 9:30 AM at the home of my girlfriend and common-law wife YOLANDA LEON, on Sierra Bella Street 2416, Santiago, without an arrest order and under the pretense that I had knowledge of the whereabouts of my friend Cristian Alvear who was being sought for the alledged crime of traffic of firearms.

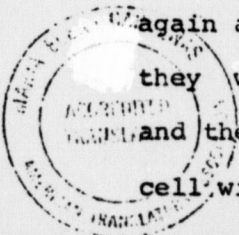
I had gone to open up my meat business, as every day at 8:00AM, and to leave my niece Lily Vargas M. in charge of the business and of the employees; later I was going to the slaughterhouse to purchase animals, when upon entering the house, a man came running up behind me and placed a machine gun on my neck; he made me enter with my arms up. Inside there were three others all dressed in civilian clothing and with firearms in their hands they had my CLwife and two girls, crying, with only their nightgowns on. The entire house was in an upheaval, papers, clothing, objects on the floor; and when they took me out with them they said "Do not fret, you will see Papa again, we are going to ask him some questions about a friend and then he will come home." They put me in my own car, and en route, a Lieutenant<sup>nant</sup> who called himself Gandolfi said to me: "If Cristian Alvear at this moment goes by here, I swear to God that you will immediately go home, because we have nothing against you, it has to do with him, because he was in the traffic of arms to the Communists and we know that you are a Catholic and of the political parties advocating order."

They took me to a Police Station located on Rogelio Ugarte Street and from there about an hour later I was taken to another stationhouse on <sup>Poblacion</sup> Rosita Renard. There I was put in a room next to the guard, they took all of my clothes off and they tied my feet and hands open in the form of a cross to a contraption that they placed on the floor. They stuffed up my mouth with some dirty rags that they took out in front of me from a suitcase, from which they



took out a magnet type gadget that produces electric shocks. All of this with a studied calm about them that made me tremble with fear, due to the threats on my life, after the terrible things and tortures which they performed on me. They blindfolded me and also tied me by my forehead and started shamelessly to scourge me, accompanied by insults, horrid threats and some too difficult to write things. They told me that when I wanted to talk, I should move a finger of the right hand. Every once in a while they would stop to question me and once again they would start even more fearlessly. When I could take it no longer, I would lift a finger, but this was only to be able to breathe. When they were lashing me, one said to the other, "go get the Chiefs, so that they can see that this jackass doesn't know anything". A little while later the door opened and I heard steps nearby, Again the electric current was applied to me even with more brutality in my genital organs. I suppose they were satisfied because then they left me alone. They were speaking in English in a low voice, but as I was blindfolded I did not see their face. Later on I learned from Gandolfi himself that they were Mssrs. Cecil and Frangulis.

For nearly three hours they were applying electric currents to me and hitting me with karate blows (there was a wall clock in the guard office). Then one of them asked me if I wanted that they continue hitting me or should we go get something to eat. I told them to stop making fun of me and they proposed that we go out to eat if I paid for it. Of course I accepted in order to rest a little. We went to a restaurant. They would say to me "eat now, that we are going to leave you without food for several days". Once back at the stationhouse one of them asked me which was my favorite soccer team. I said it was the "Audaz Italiano" and he said to me in a mocking fashion, "we are going to make eat shit because we are fans of the "Universidad de Chile". When we got back they tied me up again and they applied the electricity again, and with their foot they would bring toward me a can full of excrement. I would vomit and they would laugh. When they got tired, they through me into a cell with only a few boards on the floor for me to sleep on. There



I was kept without water or food for four days; there was a police dog kept outside the door of the cell that was fed regularly and given water.

On the fourth day a Sargent told me go sign a book that I was free. I signed happily, but it was all a lie; what had happened was that a habeas corpus had been filed in Court and that were simply in this fashion making a mockery of justice, as I did not appear as arrested in that police unit.

On the following day they came early to pick me up, and one of them said to me that with the habeas corpus petition filed with the Court of Justice, he had cleaned his ass and I was going to be very sorry for this petition.

They put me in a vehicle and took me to the port of Valparaiso. En route they continued to threaten me with stopping the vehicle and killing me if I did not tell them where my friend Alvear was hiding.

On the way Gandolfi told me that if "El Flaco" Alvear did not appear it would be worst for me - "you will be paying because of him; the naval forces are only going to ask you about him, because it is he who is of interest to them, if you know where he is, there is still time," I said to them, "why do you continue to question me, if I knew where he was I would tell you, do you think I would be suffering for no reason, why do you not question his family - but then again perhaps you are scared because he has relatives in the uniformed forces." They again threatened me and I thought it best to keep quiet as my destiny was in their hands.

This way we arrived at Valparaiso at the Naval Prison "Silva Palma". I thought this was the end of me. The marines placed a black hood to cover up to my shoulders, and they made me go up and down stairs all the time while being threatened - that they were going to throw me in the ocean, that were going to take me before the firing squad, or that they were going to throw me in an electrified pool. They took off my belt, the laces off my shoes, and my handkerchief; anything suitable for use to commit suicide. They took my personal information (pedigree) and finally threw me in a big cell

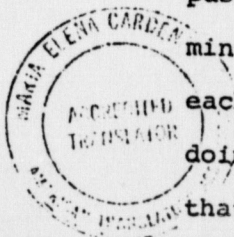


filled with political prisoners. They asked what party I belonged to, and I told them the truth, that I was in prison because of a friend since I had never been politically minded. They gave me food, and I learned from them what the situation was there: they would be lashed at any time of the day or night. On the third day they took me out to question me, hooded and threatened as always. They pushed me into a building where they were questioning and scourging men and women alike. The threats and their cries could be confused. They put me into a smaller room, because from the thrust of their push my head hit the wall, and then the same interrogatory began, so where was my friend, where were the arms; electric shocks were given as well as Karate blows, but this time without tying me down. They laughed at the way I would leap when the electricity was applied. They were tireless, they would take me outside and have me stand in the sun or at night in the cold. This they did several times, to destroy you psychologically- I'd be left there, they wouldn't even question you then.

I had no word from my family. They knew even less where I might be. We would wash our clothing with water only, at least to maintain some sort of cleanliness. There was a wash basin and a W.C. for all. The terrible odor and the fleas were too much to stand, An evangelical Sargent would read the Bible to us. He would bring us 3 or 4 day-old newspapers, that's how we knew what was going on outside.

One day a young man, a student was set free, and with him I was able to send a message to my children. It was only then and by way of the Red Cross that I was able to get word, and some 10 days following that, I received the card that they give out, and a parcel with clothing and something to eat and some book, to kill time.

They would take us out at six in the morning to run and do some gymnastics until we were beat, and then to a cold shower - three passable meals daily; after lunch and supper they would give us ten minutes in a small terrace for a breath of fresh air, and a cigarette each - they kept the ones the families sent. It took a lot of doing to let them allow me to shave. They took me hooded to a bath that belonged to personnel, and they left me in front of a mirror. I was ashamed at what I saw of myself - thin, wrinkled, with a three



week old beard. I looked like a beggar. Once I had cleansed myself I felt a little better, and when I came back to my cell, my partners in this horrid tale laughed and said that I looked ten years younger.

The prisoners were dying by the day, We would look out of a fan that there was - 2 holes 20mm wide that there were in a window - we could see the ones that were set free, some of them hardly being able to walk. Those that had "cooperated" would walk fine. We could also see the new ones that were being brought in handcuffed and lying face down in the vehicles.

Fifteen days later I was called, and I thought that they were going to torture me once more, but instead they asked me to sign a paper saying that I had been treated well, and I signed, knowing that finally I was being taken before the Naval Authorities of the "Fiscalia Naval".

The prosecutor questioned me briefly and told me that I had a request (of my person) from the United States and other countries. I thought nothing of this, as it appeared one more threat. They took me to have my picture taken for some North-American policemen who were waiting outside. That is the photograph that they have here. The prosecutor asked me if I had ever changed my name to Rafael Lira, and I answered him with the truth, because that is the kind of behaviour of criminals and that I am a working man.

From there I was transferred to the Prison at Valparaiso, and I was booked as a political prisoner. At last, I could sleep in peace and the most important, I saw my children after having been kidnapped for twenty days. I remained thus for a month and a half with the promise that I would be set free. One of those days, two of Cristian Alvear's brothers arrived as prisoners. They were Patricio and Jorge. They had been questioned by the prosecutor, without any physical tortures. It was through them that I learned that Cristian had fled to Sweden and that the Naval Police had intercepted two telephone calls. They were there for five days and we were called out to the Guard together - there there was a police vehicle with several policemen ready as for war.

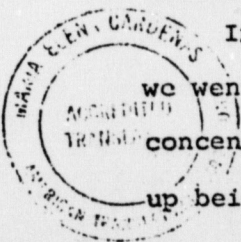


They took us out with all of our belongings towards the main office where the naval prosecutors office is located. They (the Alvears) were let go.

When I was called, I too thought that I was going to be let go, but instead they made me sign a document which said that by order of the Ministry of the Interior we were free to go, because of lack of evidence they could not continue to keep us detained and that for that reason Decree 807 was applied along with other articles mentioned only by their numbers...I signed in the presence of Cecil and Frangulis - first I signed and they the rest that were four others. We were handcuffed once again. They told us that our clothing and our belongings were to remain there in that office, and they put us in a heavily guarded Police van which with a heavy escort of other vehicles took us to Santiago. En route, it was already nighttime, they stopped. Lt. Gandolfi opened the doors and said in a threatening tone holding his pistol in his hand "whoever wants to runs away, let him do so, so I can make shit in his pants with bullets". Of course, we all made believe that we had not heard him.

We arrived at Santiago, and they drove around for a while trying to confuse us, and then took us to a police stationhouse. No. 13 of the "Carabineros". We were not registered in the Guard books. There the five of us were placed ina cell - a very small cell, and we were not allowed to call our families; they didn't even gice us water. On the floor there were some boards and the floor itself had beenwetted down so that we had to take turns in orderto rest on the boards. It was a horrible night, not so much because of the lack of facilities, but because we did not know what was going to be done with us. We thought that we would be brought before a firing squad to be shot, then that we would be sent to an island or to some obscure town in the interior of the country.

In the morning they took us out with very heavy custody and we went off to a place unknown to us. We stopped at a prisoners concentration camp and there they brought in another one, who ended up being Sergio Poblete. It was he who told us that we were being



deported to the United States, because he had read the morning newspapers. We started to discuss and I kept saying that I didn't even know that country through my dreams and had committed no crime. And so in the middle of our discussion we arrived at Pudahuel Airport. They got me out in a secretive fashion, and an American physician who also travelled with us on the airplane examined my heart. He found that I was unsettled and had the gall to ask - why? He gave me a tranquilizer and I climbed in the van again.

The Police van took a long way making turns so that no one could see us and entered the airport the back way. It stopped at the side of the airplane of Braniff Airlines. They made us climb into this plane, secretly. We saw no members of our families, nor photographers, just many policemen in great numbers as though we were very important people or big criminals. There were the American policemen Charles Willis Cecil Jr. and George Frangulis and several members of the Chilean Police. I have the passenger list.

In the airplane they kept us handcuffed up to New York. I was sick with shame; dirty, without having shaved for several days, thinking all the time, "if I haven't committed any crime, why then does my country throw me out like an undesirable being? I have worked in factories making pocketbooks since I was fourteen years old, and risen to the position of sample maker in the industry. Then on my own I have been in industry until 1967 when I had to change my line of business because I became chronically allergic to the chemical products used in the tanning of leather, and then I started to set up the meat business, where I became a purveyor to the army and an owner of a meat butcher shop since 1968 to date. I have never in forty years nearly, stopped working. Why should this happen to me? Without an extradition request, all totally illegally?"

We deplaned, I was quite flustered by all. Another set of policemen arrived and were handcuffed with another set of handcuffs. The ones I had on were given back to the Chilean Police. They put me inside a car and they started to talk to me. I told them that I did not understand them and they did not want to believe me (one of them spoke some Spanish)-that I had never been in this country.



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Later on they would throw questions at me in English -almost as to catch me off base. When they finally were convinced that I did not know English they then started questioning me about a photo that they had of me with the name Rafael Lira. I told them that I was not that (person) and that name was Rafael Mellafe Campos, and that I had been thrown out of Chile without any personal documents such as passport, personal identification document, International Vaccination Certificate, not even a visa. They told me that were not interested in any of that and that if I did not cooperate I would get 25 years sentenced to prison, and that I would die here. I told them that they had brought me by mistake, and they continued to threaten me and that they had other methods of making me talk. They showed me a picture of my present wife Yolanda Leon (surely they must have stolen it (the Chilean police) when they arrested me) and asked if I knew her and I told them who she was, her name and address, that we had two daughters, which they did not know. They threatened to bring her here arrested and to leave my daughters abandoned if I didn't talk. They took my photograph and asked about my domicile. They showed me an indictment for conspiracy in countries which I know only by name. I kept saying "NO" to them, and they kept insisting that in Chile I had spoken with certain whom I have never seen in my life. They brought me to prison and I was put in segregation saying that my life was in danger, because there were other people who wanted to kill me. I laughed and asked "why?" I don't even know the other Chileans who are here." Later on I realized that the prosecutor was doing this to pressure me and his evilness still prevailed since he had me in the "hole" for 19 days. From there I was placed in maximum security to this date, even in these circumstances I am a quiet man and give no one any trouble. The prosecutor got to the point of taking me to another jail and I was being taken to Court every day without anyone calling me. This is way that your nerves and minds get shot.

One day he called Carlos Choi, Jorge Dabed, and Francisco Guinart in order to testify against, as well as the Argentine Juan Carlos Canonico. They refused to do this because they said that they never

even heard of me before we were under arrest, and the prosecutor got very angry at them because they told the truth. How were they going to testify against me, when all they knew about me was that I was a hard-working man and a quiet man, and even in Chile the press had had nothing to say about me when I was expelled from my own country.

My letters were not given to me, I spent one and half months without any news from my family, and also they did not hear from me. Where were my letters to them and their letter to me being lost? I do not know. Even to date I get correspondence and some newspapers very irregularly. When I get desperate I try to call on the phone, but I have a very hard time, because I do not know the language - it is hard for me to communicate with the prison authorities and also it is very expensive for me to pay 30-40 dollars for a call. I am poor and my family cannot send me money up here. If they didn't intercept my mail, I would have this problem. Where are the so called human rights which are so often spoken of? Aside from having been kidnapped from my own home, I live under the threat of dying in jail for crimes that I do not know.

I left behind in Chile a legally constituted family; a married daughter aged 30 with 4 children; a son aged 29 years who is a mining engineer, married with 3 children; a daughter 18, who lost a year of university studies because of the scandal in the press about my expulsion from the country; two girls aged 15 and 13 who also lost time from school. The younger one has suffered a mental disorder, she went "crazy", she was hospitalized for a month and now continues under medical treatment.

Who and how are these tremendous losses both physical and moral going to be amended? I have been destroyed both morally, socially and commercially. I have thought of suicide, but that would mean that my detractors were right. Why have I been deported as an undesirable person? I have worked honestly all of my life, I have owed anyone any monies, I have never assaulted anyone, I have never used arms of any sort, and much less have I sent cocaine to this country not to any other. Why have I been brought to the United States by force, handcuffed in an airplane, in defiance of



all international treaties and human rights?

Pursuant to the laws, I have the right to select the country in which I want to live. Why was this right not granted to me?

Who are responsible for all of this?

What is hidden behind my kidnapping from my own home to this country where I have never been?

Mssrs. Charles Cecil and George Frangulis -they are the real directors behind my arrest, physical tortures, lashings and my kidnapping itself; they were present during all of these acts. They know who it was who allowed them to take place, and who ordered them.

The policeman who threatened me here said that I would get the maximum penalty if I did not cooperate with them. If I had known something, that man with his threats would have made me into an informant on my own fellow countrymen. He took away the money that I had with me, the equivalent of \$120 dollars - (E<sup>2</sup> 120,000) my watch - Technos brand, my suitcase with 2 suits, 2 pairs of shoes, 6 shirts, under-clothing and he told me that if I cooperated with him, I would get them back. Do I have to lie about someone in order to get back what is legally my own?

All of this can be substantiated by official documents. I swear to God it is the strictest truth.

(Signed: R.E. Mellafe)

RAFAEL MELLAPE

Federal Prison at West Street





CERTIFICATE OF ACCURACY

STATE OF NEW YORK       )  
                                  )  
COUNTY OF NEW YORK    )    SS:

THIS IS TO CERTIFY THAT on this day, Miss María Elena Cárdenas personally appeared before me, a Notary Public, in and for the aforesaid State and County. That after being duly sworn, deposed and said:

"THAT she is a translator of the SPANISH and ENGLISH languages.

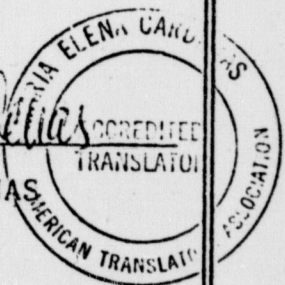
THAT she is thoroughly conversant with these languages; and has translated the SPANISH and ENGLISH languages for more than five years.

THAT she has carefully compared the attached ENGLISH translation of the annexed original document written in the SPANISH language.

THAT said translation is an accurate and true translation of such original document and of the whole thereof. "

LS:

*María Elena Cárdenas*  
MARIA ELENA CARDENAS



Subscribed and sworn to  
before me, this 21<sup>ST</sup> day  
of the month of SEPTEMBER  
of 19 74.

*John C. Corbett*  
NOTARY PUBLIC

JOHN C. CORBETT  
Notary P. C. State of New York  
No. 24000 Qual. in Kin. Co.  
Comm. Expires 12-31-76

-1-

Me llamo Rafael Enrique Mellafe Campos, 53 años, nacido en Santiago, Chile el 21/11/1921 viudo 5 hijos.

Fui detenido el 7 de Marzo de 1974, a las 9:30 AM en casa de mi esposa y conviviente Yolanda Leon, en calle Sierra Bella 2416, Santiago, judicial con el pretexto que yo sabia el paradero de mi amigo Cristian Alvear que era buscado por presunto trafico de Armas .

Yo habia ido a abrir mi negocio de carniceria, como todos los dias a la 8 AM y que se hiciera mi sobrina Lily Vargas M. cargo del negocio y de los empleados, luego iba el matadero <sup>a comprar animales</sup> ~~a tomar desayuno~~, cuando al entrar en casa, vi un hombre corriendo atras mio me puso una metralleta en la nuca, me hizo entrar con los manos en alto, dentro habia 3 mas todos de civil y con armas en la mano tenian a mi mujer y las 2 niñas, llorando solo en camisa de dormir, toda la casa estaba revuelta los papeles, ropa y objetos en el suelo, y les dijeron al sacarme, no se aflijan va a volver su papa, le vamos a preguntar unas cosas del amigo y se viene a casa, me metieron en mi propio auto, y en el camino un teniente que dijo llamarse Gandolfi me dijo; si Cristian Alvear pasa en este momento por aqui te juro por dios que inmediatamente te vas a tu casa porque contra ti nada tenemos es con el porque traficaba en armas para los comunistas y sabemos que tu eres catolico y de los partidos de orden. Me llevaron esposado a un cuartel policial en calle Rogelio Ugarte y de ahi me sacaron a la hora despues a otro cuartel en la Poblacion Rosita Renard, ahi inmediatamente me metieron a una pieza al lado de la guardia, me desnudaron y me amarraron de pies y manos abiertos en cruz en un armatoste que pusieron en el suelo, me taponeraron la boca con trapaos sucios que sacaron delante de mi, de una valija sacaron un magneto para producir electro-shocs, todo esto con una calma estudiado que me hacia temblar de miedo por las amenazas de muerte, despues de los groserias y torturas que me hacian, me vendaron la vista y me amarron de la frente tambien y empezaron a flagelarme sin lastima, en medio de insultos y amenazas horribles y dificiles



de transcribir, me dijeron que quando quisiera decir la verdad moviera un dedo de la mano derecha, de vez en quando paraban un rato para hacerme preguntas y volvian a continuar con mas saña, yo cuando no podia aguantar mas, levantaba un dedo, pero era solo para poder respirar. Cuando me estaban pegando dijo uno, anda a llamar a los jefes para que vean que este huevon no sabe nada, al rato abrieron la puerta y senti pasos muy quedos, me volvieron a poner la corriente un buen rato con mas brutalidad en los organos genitales parece que quedaron conformes porque me dejaron tranquilo. Hablaban ingles bajito, pero como estaba vendado no les vi la cara, despues supe por el mismo Gandolfi que eran Mr Cecil y Mr Frangulis.

Casi 3 horas estuvieron poniendome electricidad y dandome golpes de Karate (habia un reloj mural en la guardia) entonces una de ellos me pregunta si queria que me siguieran, pegando o ibamos a comer algo, les dije que no se burlaran de mi, y propusieron ir a comer si yo pagaba, desde luego axedi para descansar un poco, salimos a un restaurant, ellos me decian come ahora que te vamos a dejar varios dias sin comer, de vuelta al cuartel una me pregunto que cual era mi club favorito de futbol, yo dije que era el Audax Italiano y el me dijo burlandose te vamos a hacer comer mierda porque nosotros somos hinchas de las Universidad de Chile, llegando me marron de nuevo me pusieron la electricidad y me acerbaban con la punta del pie el tarro con excrementos, yo vomitaba y ellos se reian. Cuando se cansaron me encerraron en un clabozo que tenia unas pocas tablas en el piso para dormir, ahi me tuvieron sin agua ni comida 4 dias, a un perro policial que dejaron al lado de la puerta le daban comida y agua a sus horas.

Al cuarto dia me dijo un sargento que fuera a firmar el libro que estaba en libertad, firmé feliz, y eran mentiras, lo que habia pasado era que me habian puesto un Habeas Corpus en la Corte y ellos sencillamente asi se burlaban de la justicia pues ya no figuraba como detenido en esa unidad policial.

Al otro dia fueron temprano a buscarme y uno de ellos me dijo que con el **R**ecurso de Amparo de la Corte de Justicia se habia limpiado el culo, y que a

En el camino me dijo Gandolfi si no aparece el flaco (Alvear) va a ser peor para ti, tu vas a pagar por culpa de el, los marinos solamente te van a urgir por el, pues el es quien nos interesa, si sabes algo donde esta todavia es tiempo, yo les dije porque me preguntan mas, cuando si supiera donde esta se los diria para que voy a estar sufriendo por gusto, porque no interrogan la familia de el, mejor a lo tienen miedo porque tieno familiares uniformados, me volvieron a amenazan y mejor me quede callado sabia que mi destino estaba en manos de ellos.



mi me iba a pesar mucho eso.

Me subieron a un vehiculo y me llevaron al puerto de Valparaiso, en el camino me amenazaban con pararse y matarme si no les decia donde estaba mi amigo Alvear escondido, asi llegamos Valparaiso y me entregaron en el presidio naval Silva Palma " ese crei que era mi fin, los marinos me pusieron una capucha negra hasta los hombros, me hicieron subir y bajar escaleras siempre amenazando, que iban a tirar al mar, que me iban a fusilar, o me iban a hechar a una piscina electrificada, me sacaron el cinturon, los cordones de zapatos el pañuelo y todo lo que pudiera servir para suicidarse, me tomaron mis datos personales y me empujaron a un calabozo grande que estaba lleno de presos poláticos, me preguntaban que de cual partido era, yo les conte la verdad, que no habia sido nunca politico y que estaba preso por un amigo. Me dieron comida, luego supe como era la situacion de ahi, los flagelaban a cualquier hora del dia o de la noche, al tercer dia me sacaron para interr garme, encapuchado y amenazado como siempre, me metieron a empujones a un edificio donde estaban interrogando y flagelando a hombres y mujeres por igual, los quejidos gritos y amenazas se confundian, me ~~metieron~~ metieron a otro cuarto mas chico porque del empujon me pegue en una muralla, y empezaron con las mismas preguntas que donde estaba mi amigo, donde estaban las armas ~~de la sala~~, dele golpes de electricidad y Karate, pero sin amarras, se reian de los saltos que me hacian dar con la electricidad. Fran incansables me sacaban afuera y me dejaban de pie al sol, o de noche al frio, esto lo hicieran varias veces, algunas solo para destrozalo siquicamente ya que me dejaban ahi y mi siquiera me interrogaban.

No sabia de mi familia, ellos menos de donde me encontraba yo, lavabamos la ropa solo con agua para mantenemos mas o menos aseados, teniamos un lavamano y un W.C. para todos, el mal olor y las pulgas eran, insoportables, un sargento evangelico nos leia la biblia, nos traia diarios de 3 o 4 dias por eso sabiamos lo que pasaba afuera.

Un día salió un muchacho estudiante en libertad y con él mandé un mensaje telefónico a mis hijos, solo ahí y por medio de la cruz roja logré comunicarme, y a los 10 días recibí la tarjeta que ellos dan y una encomienda con ropa y cosa de comer, y unos libros para matar el tiempo.

No sacaban a las 6 de mañana a correr y hacer gimnasia hasta quedar agotados y de ahí a la ducha helada, 3 comidas diarias pasables, después de almuerzo y comida nos daban 10 minutos para tomar aire en una terraza chiquitita y un cigarillo para ~~XXXXXXXX~~ cada uno, de los que nos mandaba la familia se los quedaban ellos, me costó mucho ruegos conseguir que me sacaran para afeitarme, me llevaron encapuchado a un baño del personal y me dejaron ante un espejo me dio lastima de mí mismo, flaco, arrugado la barba de 3 semanas, parecía un pordiosero, una vez limpio me sentí mejor y al entrar al calabazo mis compañeros de infortunio se reían y decían que había rejuvenecido 10 años.

Los presos caían a montones, mirábamos por el ventilador, 2 huecos de 20cm que habían en un ventanal cuando salían en libertad algunos caminando apenas, los que habían "cooperado" caminando bien, y también cuando llegaban nuevos, esposados y tirados ~~XXXXXX~~ boca, abajo sobre el piso de los vehículos, a los 15 días me llamaron, creí que era para torturarme otra vez, pero me dijeron que tenía que firmar un papel donde decía que me habían tratado bien, firmé y supe que iba por fin a la fiscalía naval, el fiscal me interrogó brevemente y me dijo que yo tenía un



requerimiento de E.U y otros países, no le di importancia porque creí que era otra amenaza más, me llevaron a sacarme una fotografía para unos policías norteamericanos que esperaban afuera, esa es la fotografía que tienen aquí. El fiscal me preguntó si alguna vez me había cambiado nombre por Rafael Lara, yo le dije la verdad que no tenía porque hacerlo que eso lo hacen los delincuentes y yo soy un hombre de Trabajo.

De ahí fui trasladado a la Prisión de Valparaíso y fui puesto como preso político, por ahí podía dormir tranquilo y lo principal vi a mis hijos después de 20 días de secuestro. Así estuve un mes y medio con la promesa que luego saldría libre, uno de esos días llegaron presos los 2 hermanos de Cristian Alvear — Patricio y Jorge, a ellos solo los había interrogado el fiscal sin apremio físico por ellos supe que Cristian había huido a Suecia y que la policía naval le había interceptado 2 llamados telefónicos. Ellos estuvieron 5 días y nos llamaron juntos a la guardia, ahí había un vehículo con varios policías en pie de guerra.

que nos sacaran violentamente con todas nuestras pertenencias hacia la intendencia donde funciona la fiscalia naval, ellos salieron en libertad. Los Fillear,

Quando ~~yo~~ yo fui llamado tambien crei que iba a ser liberado, pero me hicieron firmar un documento en que decia por orden del ministerio del interior quedabamos en libertad, ~~pero~~ por falta de meritos para tenernos detenidos y en consecuencia no aplicaban el decreto No. 804 y los varios articulos solo por sus numeros, firme yo y despues los demas que eran 4, nos esposaron nuevamente, nos dijeron que nuestras especies y ropas quedaban ahi en la Intendencia y nos metieron a un furgon policial fuertemente custodiada y escoltado por otros vehiculos nos llevaron a Santiago, en el camino ya de noche pararon y el teniente Gandolphi abrio las puertas, y dijo amenazante con la pistola en la mano, el quiera bajarse que se fugue no mas para hacerlo cagar a balazos, claro que no hicimos los desentendidos.

Llegamos a Santiago y dieron varias vueltas con el evidente proposito de depistarnos y no llevaron a un cuartel policial, LA 13 comisaria de carabineros. Ahi nos metieron a los 5 en un calabozo muy chico y no nos permitieron llamar a nuestras familias, no nos dieron ni agua siquiera, en el piso habia una tarima de tablas y el pavimento lo habian mojado asi que nos turnamos para descansar.

En las tablas, fue una noche horrible, no tanto por la incomodidad, porque no sabiamos que iban a hacer con nosotros, pensabamos que nos fusilaban despues que nos mandaban a una isla o que nos relegaban a un pueblito olvidado del interior, en la mañana nos sacaron y fuertemente escoltados salimos con rumbo para nosotros desconocidos, paramos en un campo de concentracion de prisioneros y ahi subieron otro que resulto Sergio Poblete el nos dijo que ibamos deportados a Estados Unidos, porque el habia <sup>leido</sup> ~~leido~~ en los diarios de la mañana, no pusimos a alegar, y decia que porque yo no conocia ese pais ni en sueño y no habia cometido ningun delito y diciendome llegamos a Pudahuel, me bajaron escondido y un medico norteamericano que tambien viajó en el avion me examinó el corazon, me encontro alterado y todavia tuvo la desfachatez de preguntarme porque? me dio un cal... y subí al Furgón.

Ahi estaban Cecilia y Tranquilis

Sin registrar  
nos en los  
Libros de  
Guardia



La patrulera policial dio una gran vuelta para que nadie nos viera y entro al aeropuerto por atras y se puso el lado del avion de la lines Braniff. Y nos hicieron subir a este, escondidos, no vimos familiares, ni fotografos mas que muchos policias en ~~un~~ un des pliegue impresionante ~~como~~ igual que si fuéramos grandes personas o grandes delincuentes, Ahi estaban los policias americanos Charles Willis, Cecile Jr., George Frangules y varios policia Chilenos. Tengo la nómina del vuelo.

En el avion nos trajeron esposados hasta mismo Nueva York, venia enfermo de verguenza, sucio, sin afeitar varios dias, pensando si no he comedido ningun delito, porque mi pais me hecha por indeseable? si he trabajado <sup>16 años</sup> de 11 años en fabricas de carteras hasta llegar a delista ~~en~~ en el ramo y despues con mis propios esfuerzos he sido industrial hasta el año 1967 que cambie de jiro porque me dio alergia cronica con los materiales quimicos, del cuero y me dedique a trabajar en carne, siendo proveedor del ejercito y dueño de carniceria del año 68 hasta hoy, nunca he dejado de trabajar durante casi 40 años, porque a mi pasa esto? Sin haber pedido EXTRADICION - Todo completamente ilegal.

Descendimos del avion yo aturdido con todo, llegaron otros policias me pusieron otras esposas, las que tenia se las devolvieron a los policia chilenos, me introdujeron a un auto, me empezaron a hablar y yo les dije que no entendia y no me querian creer ( uno ~~habla~~ hablaba algo de español ) que nunca habia estado en este pais. Despues me hacian sorpresivas preguntas en ingles, cuando se convencieron que en realidad no sabia, quedaron sorprendidos y empezaron a hacerme pregunta sobre una fotos que tenian mia con el nombre de Rafael Lira y yo les dije que era yo y mi nombre Rafael Mellafe Campos, que me habian echado de Chile sin ningun documento, pasaporte, carnet de identidad, certificado de vacuna internacional, ni menos visa, me dijeron que a ellos no lo importable nada eso, y que si no cooperaba iban a condenar a 25 años de prision y que iba a morir aqui, yo les dije que me traian equivocado y ellos me seguian amenazando y que tambien tenian otros medios para hacerme hablar, me mostraron una foto de Yolanda Leon, mi mujer actual ( seguro que se la robaron los policias Chilenos cuando me detuvieron ) que si la conocia y les conte

quien era y su nombre direccion, que teniamos dos hijas cosas que ignoraban hasta su nombre me amenazaron contra ~~traerla~~ traerla presa y dejar mis hijas abandonadas si no hablaba, me sacaron foto y me preguntaron mi domicilio, y me mostraron una acusación de conpiracion en paises que no conozco mas que de nombre, yo los decia que no y ellos que yo habria hablado en Chile con ciertas personas que no visto en mi vida. Me trajeron a prision y me pusieron en segregacion diciendo que yo corria peligro, porque habian otra personas que me querian matar, yo me reí y les dije que porque, cuando yo no conocia mi a los Chilenos que estan aqui, despues me di cuenta que el fiscal lo hacia para presionarme y su maldad todavia sigue porque me tuvo 19 dias en el hoyo, y de ahi me puso en maxima seguridad hasta hoy, en circunstancias que soy un hombre tranquilo que no le doy problemas a nadie. Llegó el fiscal hasta el colmo de amenazarme con llevarme a otra carcel y me hacia ir a la corte todos los dias sin que nadie me llamara, asi le destrozan los nervios y la mente a uno, un dia llamé a Carlos Choi, Jorge Daved, Francisco Guinart; y al argentino Juan Carlos Canonigo para que declararon en mi contra, ellos se negaron porque no me conocian ni de nombre antes de caer presos, y el fiscal se indignó con ellos porque le dijeron la verdad, que como iban a atestiguar en mi contra cuando lo unico que sabian de mi era que yo soy un tipo trabajador y tranquilo que hasta la prensa en Chile no habia escrito nada en mi contra, cuando fui expulsado de mi propia ~~mi~~ patria, He sido privado de mi correspondencia estuve 1 1/2 mes sin saber nada de mi familia, y ellos tampoco nada de mi, mis cartas y las de ellos se perdian donde? no se, todavia para mi la prensa y las cartas me llegan tarde mal y nunca, cuando me desespero trato de llamar por telefono cosa que me cuesta mucho por mi desconocimiento del idioma, me cuesta ~~conseguir~~ <sup>hablar</sup> con los oficiales de la prision y ademas es muy caro para mi pagar 30 o 40 dolares por llamado, ya que soy pobre y mi familia no me puede mandar dinero a esta, si no me interfirieran la correspondencia no tendria esta problema, donde estan los derechos humano que tanto hablan? Ademas de haberme secuestrado de mi propia casa, me violan la correspondencia y vivo amenazado de morir en prision por delitos que ni conozco.



Dejé en Chile una familia legalmente constituida, una hija casada 30 años con 4 hijos - un hijo 29 años ingeniero de minas <sup>universitarios</sup> casado 3 hijos, una hija de 12 años que perdió el año de estudios por el escándalo de la prensa por mi expulsión del país, dos niñas de 15 y 13 años que también perdieron sus estudios, la menor sufrió un trastorno mental se volvió loca, estuvo un mes hospitalizada y hasta continúa en tratamiento médico.

¿Quien y como va a reparar estos inmensos daños físicos y morales?

-Yo he sido destruido moral - social y comercialmente, he pensado

● suicidarme, pero sería darles razón a mis detractores.

¿Porque he sido deportado por indeseable? He trabajado toda

mi vida honradamente, jamás he quedado debiendo dinero a nadie

jamás he oprimido a nadie, jamás he usado armas de ninguna especie, menos he mandado cocaína a este país, ni ninguno otro.

¿Porque me trajeron a E.U. por la fuerza, esposado en el avión violando todos los Tratados internacionales y los derechos humanos?

● Según las leyes tengo derecho a elegir el país que yo quiera para vivir. ¿Porque no se me concedió ese derecho?

¿Quien o quienes son responsable de todo esto?

¿Que hay oculto tras mi secuestro hecho desde mi propio hogar hasta este país que jamás había conocido?

¿Mister Charles Cecil y Mister George Frangule ellos son los responsables directos de mi detención - Torturas físicas - Flagelaciones y mi secuestro, ellos estaban presentes en todos esos actos y ellos saben quien los permitió y quien los mando! ~~Retrato~~

El policía que me interrogó aquí me amenazó con la pena máxima si no cooperaba con ellos, si hubiese sabido algo ese hombre con sus amenazas me habría convertido en delator de mis propios compatriotas, me quitó el dinero que traía equivalente a 120 dolares (\$120.000) ciento veinte mil escudos, mi reloj marca "Technos" automático, una valija con 2 Trajes - 2 pares de zapatos - 6 camisas - ropa interior y me dijo que cuando cooperara me los devolvía, Tengo que columniar a alguien para recuperarlo que es ~~legitimamente mío~~? Legitimamente mío?

Todo esto lo puedo comprobar con documentos oficiales y juro por dios que es la estricta verdad.

*R.E. Mellafe*

Rafael Mellafe

Prisión Federal de West STREET.

Sworn to Before me  
this 19<sup>th</sup> of September, 1974

Maria Elena Cardenas

MARIA ELENA CARDENAS  
Notary Public, State of New York  
No. 281037  
New York County  
Commission Expires March 30, 1976





SECRET

2025.05.17  
2025.05.17

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SECRET

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MAY/04/1974

SANTIAGO - CELLS

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REPÚBLICA DE CHILE  
JUNTA DE GOBIERNO  
MINISTERIO DEL INTERIOR  
DEPTO. DE EXTRANJERÍA  
H.S.R.  
SANTIAGO

EXPULSA DEL PAÍS A PERSONAS QUE  
INDICA.-----

DECRETO Nº 807.-/

SANTIAGO, 2 de Mayo de 1974.

La Junta de Gobierno de la República de Chile, decretó hoy lo que sigue :

TENIENDO PRESENTE :

Que, los señores Jorge S. Dabed Su mar, Carlos Choy Ceballos, Sergio N. Poblete Mayorga, Rafael E. Mellafe Campos, Sergio Lazo Vargas, Carlos Baeza Baeza y Raúl Selim Valenzuela, de nacionalidad chilena, se dedican en Chile al tráfico de estupefacientes, siendo éstos reconocidos internacionalmente por el referido delito;

Que, dichas personas, podrían utilizar los ingresos obtenidos ilícitamente para poner en peligro la seguridad Interior del Estado, el orden interno y la normalidad de las actividades nacionales;

Que, el Departamento de Orden y Seguridad de la Dirección de Carabineros, por oficio Reservado Nº 69, de fecha 24 de abril pasado, previo estudio de los antecedentes de las personas mencionadas, recomienda su expulsión del país;

Que, la Dirección General de Investigaciones, por oficio Nº 91, de 30 de abril del año en curso, informa que cada uno de ellos tiene un numeroso prontuario de delictual, entre los cuales figuran los siguientes delitos: estafas, hurto, vagancia, agresión, falsificación de documentos públicos, violación de domicilio, homicidios frustrados, portar armas de fuego sin autorización, infracción a la Ley de Cambios Internacionales y tráfico de estupefacientes, y

De conformidad con lo dispuesto en el artículo 22 del Decreto Ley Nº 81, de 1973,

DECRETO :

La Dirección General de Investigaciones procederá a expulsar del territorio nacional, sin más trámites, a los ciudadanos chilenos señores Jorge Segundo DABED SUMAR, Carlos CHOY CEBALLOS, Sergio Napoleón POBLETE MAYORGA, Rafael Enrique MELLAFE CAMPOS, Sergio LAZO VARGAS, Carlos BAEZA BAEZA, y Raúl SELIM VALENZUELA.

Tómese razón y comuníquese.

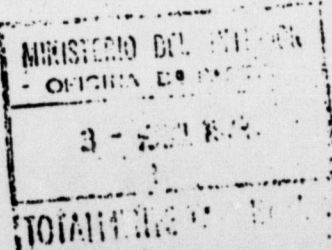
POR ORDEN DE LA JUNTA DE GOBIERNO,

OSCAR BONILLA BRADANOVIC, General de División, Ministro del Interior. PATRICIO CARVAJAL PRADO, Vicealmirante, Ministro de Defensa Nacional.

Lo que transcribo a Ud. para su conocimiento.

Saluda atentamente a Ud.

Partes  
Depto. Extranjería  
H.S.R.EE.  
Contraloría  
Identificación  
Investigaciones  
Archivo.



ENCARGADO MONTECARMINE  
Secretaría del Interior



REPUBLIC OF CHILE  
JUNTA GOVERNMENT  
MINISTRY OF THE INTERIOR  
DEPARTMENT OF FOREIGN AFFAIRS

Expels from the Country  
the persons indicated.-

DECREE NO. 807 /

hsr  
-T.-PGB.-

Santiago, May 2, 1974

THE JUNTA GOVERNMENT OF THE REPUBLIC OF CHILE, today decreed the following:

WHEREAS:

Mssrs. Jorge S. Dabed Sumar, Carlos Choy Ceballos, Sergio N. Poblete Mayorga, Rafael E. Mellafe Campos, Sergio Lazo Vargas, Carlos Baeza Baeza and Eaul Selim Valenzuela, Chilean Nationals, devote themselves in Chile to the narcotics traffic, and are recognized internationally by said crime;

WHEREAS:

These persons could use the illicitly-obtained income to put in danger the internal security of the state, the internal order and the normality of the national activities;

WHEREAS:

The Department of Order and Security of the Directorate of Carabineros Police, by Reserved Instrument No. 69, dated last April 24 and following a review of the antecedents of the persons mentioned, recommends their expulsion from the country;

WHEREAS:

The Directorate General of Investigations Police by instrument No. 91 of April 30 of this year, informs that each one of them has a long criminal record, included in which are the following crimes: fraud; theft, vagrancy, falsification of public documents, housebreaking, attempted homicide, unauthorized possession of firearms, infraction of the foreign exchange law and traffic in narcotics, and

Pursuant to Article 2 of Legal Decree No. 81 of 1973,

BE IT DECREED THAT:

THE DIRECTORATE GENERAL OF INVESTIGATIONS will proceed to expel from the National Territory without further proceedings, the Chilean citizens, Messrs Jorge Segundo DABED SUMAR, Carlos CHOY CEBALLOS, Sergio Napoleon POBLETE MAYORGA, Rafael Enrique MELLAFE CAMPOS, Sergio LAZO VARGAS, Carlos BAEZA BAEZA and Raul SELIM VALENZUELA.

TAKE HEED AND COMMUNICATE.

BY ORDER OF THE GOVERNMENT JUNTA.

Oscar Bonilla Bradanovic, Divisional General, Ministry of the Interior, Patricio Carvajal Prado, Vice-Admiral, Ministry of National Defense.

Which (order) I copy to you for your information.

Greetings to you most attentively,  
(Signed: illegibly)  
ENRIQUE MONTERO MARE  
Under-Secretary of the Interior



CC:

Judicial Office  
Department of Foreign Affairs  
Ministry of Foreign Affairs  
Treasury Department  
Identification Section  
Investigations

File

Rubber Stamps:

Ministry of the Interior - Chile  
Chief - File Section

In accordance with its original

Ministry of the Interior  
Judicial Office  
May 3, 1974  
FULLY PROCESSED



DECREE LAW NO. 81

Decree Law No. 81

Published in the Official Diary No. 28,694 of November 6, 1973

MINISTRY OF NATIONAL DEFENSE

Undersecretariat of War

FIXES SANCTIONS FOR REASONS OF SECURITY OF THE STATE, FOR THOSE PERSONS WHO SHALL DISOBEY THE PUBLIC CALL INDICATED BY THE GOVERNMENT.

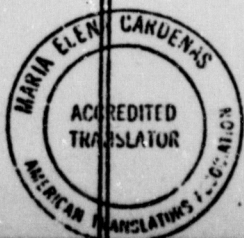
Decree Law No. 81 ---Santiago, October 11, 1973  
In accordance with the dispositons of Decree Laws No. 1 and 5 of September 11, 1973.

...ARTICLE 2: In cases contemplated under Article 418 of the Code of Military Justice, such as at times or during a state of war, and when it is so required by the high interests of the security of the State, the Government shall be able to order the expulsion or abandonment of the country by given persons, be these nationals or foreigners, by way of a decree which shall bear the signatures of the Ministers of the Interior and of the National Defense.

Those who are objects of these measures of expulsion or abandonment of the country shall be able to freely choose their place of destination.

-0-

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# Llevados a EE. UU. Otros 6 Traficantes de Drogas

La tarde del sábado fueron trasladados a Estados Unidos otros seis traficantes chilenos implicados en el contrabando de drogas. Serán procesados en ese país por "conspiración contra el pueblo norteamericano".

Los seis delincuentes fueron detenidos en operativos militares por personal de la Sección Prevención Delictual de Carabineros de Chile, dirigida por el Mayor Luis Fontaine Manríquez. Ellos son Sergio Lazo Vergas, ex funcionario de Sanidad Vegetal con sede en Pudahuel, sindicado como socio de Adolfo Sobosky Tobías, propietario de caballos de carreras y delatado ante el Fiscal Federal de EE. UU. por su propio ex socio; Jorge David Sumar, que tenía un restaurante en la Avda. Perú y al que se le acusa como elaborador de varios de los cargamentos de clorhidrato de cocaína que fueron llevados por varios traficantes a Estados Unidos y a Europa; Carlos Baeza Baeza, ex propietario de la "Posada Granaderos"; Rafael Mellafe Campos, financiero del contrabando de drogas que alcanzó una gran reputación como "hombre de negocios", pero al que la policía jamás se atrevió a detener en el pasado régimen; Carlos Choy Ceballos, ariqueño al que se le califica como el más experto elaborador de clorhidrato de cocaína que ha existido en Chile, y Sergio Napoleón Poblete Mayorga, delincuente habitual que ascendió por la siniestra escala de crimen desde ladrón de micros hasta traficante de drogas, pasando por ladrón de tienda, "lanza" y "escapero".

Los seis nuevos expulsados del país se sumarán a los 14 traficantes que fueron llevados a Estados Unidos hace dos meses y entre los que se anotan Adolfo Sobosky Tobías, Eduardo "Yayo" Fritis y Wladimir Bandera.



En la foto, las patrulleras policiales se acercan al avión Braniff para embarcar a los seis traficantes que la policía chilena expulsó del país a fin de entregarlos a la justicia de Estados Unidos. (Gentileza de TELEDIARIO, de Canal 7 de TV Nacional)



ANOTHER SIX DRUG TRAFFICKERS TAKEN TO THE UNITED STATES

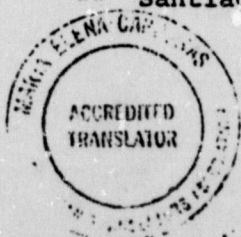
Saturday afternoon another six Chilean drug traffickers, allegedly involved in the smuggling of drugs were moved to the United States. They will be processed in that country for "conspiracy against the North American people:"

The six delinquents were arrested in military operations by personnel of the "Sección Prevención Delictual de Carabineros de Chile" \* under the direction of Major Luis Fontaine Manríquez. They are Sergio Lazo Vargas, former employee of the Vegetable Sanitary Section at Pudahuel<sup>\*\*</sup>, alleged to be the partner of Adolfo Sobosky Tobias, owner of race horses and informed upon before the United States Attorney by his own former partner; Jorge Dabed Sumar, who had a restaurant on Peru Avenue and who is accused of having manufactured several shipments of cocaine hydrochloride which was taken to the United States and Europe by several traffickers; Carlos Baeza Baeza, former owner of the "Posada Granaderos"; Rafael Mellafe Campos, financier of the drug smuggling operation who acquired a great reputation as the "businessman" but whom the police never dared arrest during the former regime; Carlos Choy Ceballos from Arica, who is qualified as being the most expert manufacturer of cocaine hydrochloride that has ever existed in Chile; and Sergio Napoleon Poblete Mayorga, a habitual criminal who rose in the sinister ranks of crime from a petty thief of \_\_\_\_\_ to drug trafficker, passing through the stages of department store shoplifter, \_\_\_\_\_ and \_\_\_\_\_.

The six newly expelled from the country are now added to the \_\_\_\_\_

\* Crime Prevention Section of the Police of Chile.

\*\* Santiago's Airport.



Page 2

list of fourteen who were taken to the United States two months ago, among whom are Adolfo Sobosky Tobias, Eduardo Yayo Fritis and Wladimir Bandera.

Caption:

In the photograph, the police patrols go near the Braniff plane to send off the six traffickers which the police expelled from the country with the object of turning them over to the United States justice.

(Courtesy of TELEDIARIO, Channel 7, National TV)



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v-

: AFFIDAVIT

RAFAEL LIRA, et al., : 73 Cr. 751

Defendants.:

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

JAMES E. NESLAND, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and am assigned to the prosecution of the above-entitled action. I have familiarized myself with the facts and circumstances pertaining to the expulsion of Rafael Lira, a/k/a Rafael Mellafo Campos, and, upon information and belief, I make this affidavit in opposition to defendant's motion, pursuant to Rule 12, Fed. R. Crim. P., for an order dismissing the indictment upon the ground that this Court lacks jurisdiction.

2. The defendant contends that the indictment against him should be dismissed because jurisdiction of his person was obtained by this Court in violation of the standards set forth in United States v. Toscanino, Dkt. No. 73-2732 (2d Cir. May 15, 1974). In the alternative,

defendant claims that he has made a sufficient showing to warrant a hearing on his motion under the standards enunciated in Toscanino. In support of these contentions, defendant alleges in his affidavit essentially that he was arrested on March 7, 1974 in Santiago, Chili by Chilean law enforcement officers; that he was thereafter detained by the Chilean police for a period of over two months during which, in the presence of two American agents, he was subjected to interrogation and torture; and that he was then transported against his will to the United States.

3. The facts and circumstances of defendant's presence within the jurisdiction of this Court are as follows:

On August 3, 1973, Indictment 73 Cr. 751 was filed in the Southern District of New York charging Rafael Lira, a Chilean citizen, as well as sixteen other defendants, with conspiracy to violate the Federal narcotics laws by supplying cocaine for importation into the United States. Upon the filing of the indictment, arrest warrants were issued for all the named defendants by the United States District Court.

On February 28, 1974 the Santiago Chile District Office of the United States Drug Enforcement Administration ("D.E.A., Santiago") was notified by the Drug Enforcement Administration International Enforcement Section in Washington, D.C. ("D.E.A., International") that an indictment and warrant of arrest were in existence for Rafael Lira in the Southern District of New York and that certified copies thereof were being forwarded to D.E.A., Santiago.



On March 8, 1974 D.E.A. International was notified by D.E.A., Santiago that it had been advised that on March 7, 1974 Chilean police officers had arrested Rafael Enrique Mellafe Campos, believed to be Rafael Lira.

On March 19, 1974 D.E.A. International was notified by the New York office of the Drug Enforcement Administration that Rafael Enrique Mellafe Campos was identified as the person indicted as Rafael Lira.

On April 17, 1974, the D.E.A., Santiago notified D.E.A., International that Rafael Lira was presently incarcerated by Chilean authorities who were considering ordering his expulsion from Chile pursuant to the request of D.E.A., Santiago.

On May 2, 1974 an order of expulsion was signed by Enrique Montero Marx, Undersecretary of the Interior, Republic of Chile, directing that Rafael E. Mellafe Campos, and five other defendants indicted in the United States, be expelled from Chile. (A copy of the order, and a translation thereof, is attached hereto as Exhibit A.)

On May 4, 1974, at 6:30 p.m., Rafael Lira, and five other defendants indicted in the United States, were placed aboard Braniff flight 988 from Santiago, Chile arriving in Lima, Peru at 9:30 p.m. After a 1-3/4 hour stopover in Lima, Peru the defendants were transported to Braniff flight 900 from Lima, Peru to New York City, which arrived in New York City at 8 a.m. on May 5, 1974. During the flight, the defendants, including Rafael Lira, were

JEN:par accompanied by Chilean police officials, an agent of the D.E.A., Santiago, Special Agent Charles W. Cecil, Jr., and a doctor.

Upon arrival in New York City, the defendants, including Rafael Lira, were arrested and transported by Special Agents of the New York office of the Drug Enforcement Administration first to the Drug Enforcement Administration offices and then to the Federal House of Detention.

On Monday, May 6, 1974, Rafael Lira was brought to the United States Courthouse for the Southern District of New York where he was arraigned on Indictment 73 Cr. 751 before the United States Magistrate Sol Schreiber and bail was fixed for Rafael Lira at \$350,000.

4. George C. Frangullie, Special Agent in charge of the Drug Enforcement Administration, Santiago, and Special Agent Charles W. Cecil, Jr., did not participate in the apprehension of Rafael Lira by Chilean authorities on March 7, 1974. Nor did they participate at any time in any interrogation of Lira, or alleged torture of him during his incarceration by the Chilean authorities. Agents Frangullie and Cecil were in the presence of Rafael Lira on the single occasion of his flight from Santiago, Chile to New York City: Agent Frangullie checked on the security of all the defendants, including Rafael Lira, when placed aboard Braniff flight 988 in Santiago, Chile; and Agent Cecil accompanied these defendants, and the Chilean authorities, on the flight from Santiago, Chile to New York City. Agent Frangullie remained behind in Santiago, Chile and did not accompany the defendants on the flight.



5. In view of the facts and circumstances set forth herein, the Government submits (1) that jurisdiction over the person of Rafael Lira was not obtained in violation of the standards of United States v. Toscanino and (2) that the defendant has shown no credible evidence that the United States Government engaged in deliberate, unnecessary and unreasonable invasions of his constitutional rights in order to obtain jurisdiction of his person. Therefore, under the holding in Toscanino defendant is not entitled to a dismissal of the indictment or an evidentiary hearing on his claims in that regard.

WHEREFORE, it is respectfully requested that defendant's motion be denied in all respects.

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JAMES E. NESLARD  
Assistant United States Attorney

Sworn to before me this

day of September, 1974

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Notary Public

REPÚBLICA DE CHILE  
GOBIERNO  
MINISTERIO DEL INTERIOR  
DEPTO. DE EXTRANJERÍA  
SER.  
N.º T. 163.7

EXPULSA DEL PAÍS A PERSONAS QUE  
INDICA.-----

DECRETO N.º 807.-/

SANTIAGO, 2 de Mayo de 1974.

La Junta de Gobierno de la República de Chile, decretó hoy lo que sigue :

TENIENDO PRESENTE :

Que, los señores Jorge S. Dabed Surmar, Carlos Choy Ceballos, Sergio N. Poblete Mayorga, Rafael E. Mellafe Campos, Sergio Lazo Vargas, Carlos Baeza Baeza y Raúl Selim Valenzuela, de nacionalidad chilena, se dedican en Chile al tráfico de estupefacientes, siendo éstos reconocidos internacionalmente por el referido delito;

Que, dichas personas, podrían utilizar los ingresos obtenidos ilícitamente para poner en peligro la seguridad Interior del Estado, el orden interno y la normalidad de las actividades nacionales;

Que, el Departamento de Orden y Seguridad de la Dirección de Carabineros, por oficio Reservado N.º 69, de fecha 24 de abril pasado, previo estudio de los antecedentes de las personas mencionadas, recomienda su expulsión del país;

Que, la Dirección General de Investigaciones, por oficio N.º 91, de 30 de abril del año en curso, informa que cada uno de ellos tiene un numeroso prontuario delictual, entre los cuales figuran los siguientes delitos: estafa, hurto, vagancia, agresión, falsificación de documentos públicos, violación de domicilio, homicidios frustrados, portar armas de fuego sin autorización, infracción a la Ley de Cambios Internacionales y tráfico de estupefacientes, y

De conformidad con lo dispuesto en el artículo 2º del Decreto Ley N.º 81, de 1973,

D E C R E T O :

La Dirección General de Investigaciones procederá a expulsar del territorio nacional, sin más trámites, a los ciudadanos chilenos señores Jorge Segundo DABED SURMAR, Carlos CHOY CEBALLOS, Sergio Napoleón POBLETE MAYORGA, Rafael Enrique MELLAFE CAMPOS, Sergio LAZO VARGAS, Carlos BAEZA BAEZA y Raúl SELIM VALENZUELA.

Tómese razón y comuníquese.

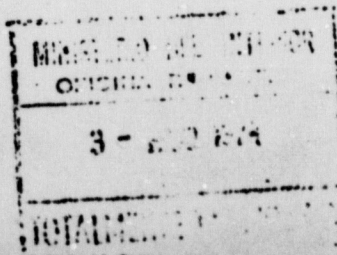
POR ORDEN DE LA JUNTA DE GOBIERNO,

OSCAR BONILLA BRADANOVIC, General de División, Ministro del Interior. PATRICIO CARVAJAL PRADO, Vicealmirante, Ministro de Defensa Nacional.

Lo que transcribo a Ud. para su conocimiento.

Saluda atentamente a Ud.

Partes  
Depto. Extranjería  
M. R. R. E. E.  
Controloría  
Identificación  
Investigaciones  
Archivo.



ENRIQUE MONTERO MARR  
Ministro del Interior



REPUBLIC OF CHILE  
PROVINCE AND CITY OF SANTIAGO  
EMBASSY OF THE UNITED STATES OF AMERICA } SS:

I, F. D. Purdy, ~~Vice~~ Consul of the United States of America at Santiago, Chile, duly commissioned and qualified, do hereby certify that on this 5th. day of July, 1974 before me personally appeared Enrique Montero Marx, Undersecretary of Interior of the Republic of Chile,

to me personally known, and known to me to be the individual described in, whose name is subscribed to, and who executed the annexed instrument, and being informed by me of the contents of said instrument he duly acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of this Embassy Santiago, Chile, this 5th. day of July, 1974.

F. D. Purdy  
Consul of the United States of America

Republic of Chile  
Junta Government  
Ministry of the Interior  
Department of Foreign Affairs  
hsr.  
.-.T.- PGB.-

Expels from the  
Country the Persons  
Indicated.-

Decree No. 807/

The Junta Government of the Republic of Chile today  
decreed the following:

WHEREAS:

Messrs. Jorge S. Dabed Sumar, Carlos Choy Ceballos,  
Sergio N. Poblete Mayorga, Rafael E. Mellafe Campos, Sergio  
Lazo Vargas, Carlos Baeza Baeza and Raul Selim Valenzuela,  
Chilean Nationals, Devote themselves in Chile to the narcotics  
traffic and are recognized internationally by said crime;

(WHEREAS:)

These persons could use the illicitly - obtained  
income to put in danger the internal security of the state,  
the internal order and the normality of the national activities;

(WHEREAS:)

The department of order and security of the Directorate  
of Carabineros [uniformed police], by reserved instrument No. 69,  
dated last April 24 and following a review of the antecedents of  
the persons mentioned, recommends their expulsion from the country;

(WHEREAS:)

The Directorate-General of Investigations [plain  
clothes police], by instrument No. 91, of April 30 of this  
year, informs that each one of them has a long criminal  
record, included in which are the following crimes: robbery,



theft, vagrancy, assault, falsification of public documents, housebreaking, attempted homicide, unauthorized possession of firearms, infraction of the foreign exchange law and traffic in narcotics, and

In accord with that which is set out in Article 2 of Legal Decree No. 81, of 1973,

BE IT DECREED THAT:

The Directorate-General of Investigations will proceed to expel from the National Territory, without further proceedings, the Chilean citizens Jorge Segundo DABED SUMAR, Carlos CHOY CEBALLOS, Sergio Napoleon POBLETE MAYORGA, Rafael Enrique MELLAPE CAMPOS, Sergio LAZO VARGAS, Carlos BAEZA BAEZA and Raul SELIM VALENZUELA.

TAKE HEED AND COMMUNICATE.

By order of the Government Junta, OSCAR BONILLA BRADANOVIC, Divisional General, Ministry of the Interior. PATRICIO CARVAJAL PRADO, Vice-Admiral, Ministry of National Defense.

Which (Order) I copy to you for your information.

Greeting you attentively.

(Signed)

ENRIQUE MONTERO MARX  
Undersecretary of the Interior

(cc:)

Judicial Office  
Dept. of Foreign Affairs  
M. RR . EE. [Ministry of Fgn. Affairs]  
Treasury Department  
Identification Section  
Investigations  
File.

(Stamped with the following:

1. Ministry of the Interior - Chile  
Chief, File Section
2. Conforms with original
3. Ministry of the Interior - Judicial Office -  
3 May 1974 - FULLY PROCESSED)

JEN:art

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

RAFAEL LIRA, et al.,

Defendants.

:

:

:

:

SUPPLEMENTAL AFFIDAVIT

74 Cr. 751

STATE OF NEW YORK )

COUNTY OF NEW YORK :

SOUTHERN DISTRICT OF NEW YORK)

ss.:

JAMES E. NESLAND, being duly sworn, deposes and  
says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York. I am assigned to the prosecution of the above-entitled action and make this supplemental affidavit to bring to the attention of this Court the recent decision of the Honorable Jack B. Weinstein, United States District Judge, in United States v. Poblete, 74 Cr. 383 (E.D.N.Y. July 8, 1974). There, after hearing the defendant's testimony regarding the circumstances of his arrest and expulsion, Judge Weinstein held that United States v. Toscanino was not controlling, since the defendant had been arrested and expelled by the Chilean government. (A copy of the transcript and decision are attached hereto as Exhibit A.)



JEN:art

2. The significant facts in United States v. Poblete, as testified to by Poblete, were that Poblete, a Chilean citizen, was arrested on November 13, 1973 in Anpergusto, Chile by the Chilean police. Subsequent to his arrest, Poblete was taken someplace in Anpergusto where he was held incommunicado for seven days. During the seven days Poblete was interrogated, beaten and tortured with electric shocks to his body and genitals. Thereafter, Poblete was transported to Santiago, Chile to the Department of Investigation where he was again held incommunicado for about two weeks and subjected to beatings, electric shocks, and other tortures. During this period Americans were present at the Department but, Poblete testified, he did not know whether they participated in the interrogations or tortures, although he was interrogated by foreigners at that time. Poblete was then moved to a concentration camp located in a stadium outside Santiago, where he remained until placed aboard an airplane on May 4, 1973 and flown without incident to the United States. Aboard that airplane were Special Agents Cecile and Frangullie of the Drug Enforcement Administration, who Poblete had never before seen. (Tr. 15-31)

The Government represented to Judge Weinstein that no agents of the United States located in Chile participated in the activities surrounding the expulsion. (Tr. 32-33)

On these facts, Judge Weinstein held:

JEN:art

"There is no evidence that the United States government participated in any illegal activities in Chile or in this country in connection with the expulsion of the defendant. He was known to the police of Chile as a habitual criminal and one who had been indicted in this country in a legal and lawful manner.

It was not inappropriate under the circumstances for this Government to request the cooperation of the Chilean Government in obtaining the extradition (SIC) of this defendant.

This Court has no power to inquire into the operations of the Chilean laws and the nature of their extradition and expulsion procedures.

Upon delivery of the defendant to the American agents, according to the law of Chile, so far as can be determined by this Court, he was transported upon the basis of an arrest warrant issued in this Court following indictment.

That indictment, so far as this Court can determine, is valid.

He was transported by what the Court can take judicial notice to be was a normal, civilian airline, Braniff airline, on a regularly scheduled flight to this country.

He was not interrogated nor treated improperly by any American agent once they obtained custody.

Under the circumstances, the Court does not believe that the Toscanino case has any application.

The exercise of this Court's jurisdiction, therefore, was proper." (Tr. 35-36)

3. It is the Government's position that Judge Weinstein's decision applies full force to the situation here, particularly since Sergio Poblete and Rafael Lira were the subjects of the same Chilean expulsion order and



JEN:art


were brought to the United States on the same flight and under the same circumstances. The only arguable difference between the situations is that Lira originally made averments that Special Agents Cecile and Frangullie were present on two occasions preceding his expulsion. This difference, the Government submits, is not material legally or factually.

Legally, as the Government's brief points out, illegal United States involvement in the interrogation process, if proved, can be remedied by the traditional relief of suppressing all evidence obtained in that manner. Factually, Poblete's testimony that he was unsure of direct United States involvement, although he was aware of their presence at the place of interrogation and of his interrogation by foreign-speaking people, was denied by the Government before Judge Weinstein. Lira's averments here that Agents Frangullie and Cecile were present on an occasion when Lira was interrogated and on another occasion when Lira was required to sign a document, like those in Poblete, stand denied by the Government. Moreover, there is now no basis for crediting Lira's averments of direct United States involvement, made in his original affidavit submitted herein, in light of Lira's more recent affidavit, in which he again fully recounts the circumstances of his arrest and expulsion but omits the averments of direct involvement by Special Agents Frangullie and Cecile. The latter affidavit

JEN:art

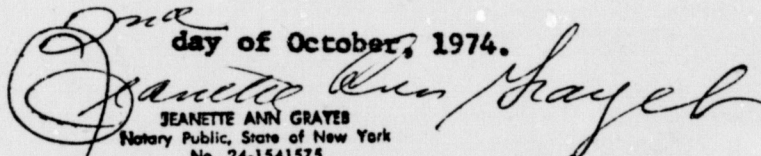
of Lira, attached hereto as Exhibit B, now avers only on one occasion, when interrogated, English-speaking people unseen by him, were brought in; and on one occasion when signing a document he was told by a photographer that United States agents were outside. (Lira affidavit, Exhibit B, pars. 9 and 14) The first mention of Special Agents Cecile and Frangullie in this affidavit is that they were aboard the Braniff flight which brought him to New York as the Government's affidavit in this case confirms. The facts now before this Court are completely indistinguishable from the facts before Judge Weinstein.

WHEREFORE, it is respectfully requested that the defendant's motion be denied in all respects.

  
JAMES E. NESLAND  
Assistant United States Attorney

Sworn to before me this

*One* day of October, 1974.

  
JEANETTE ANN GRATES  
Notary Public, State of New York  
No. 24-1541575  
Qualified in Kings County  
Certificate filed in New York County  
Commission Expires March 30, 1978



MR. Nesland.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RAPHAEL MELLAPE

Petitioner

-v-

AFFIDAVIT

74 Civ. 4123

U.S. ATTORNEY AND/OR WARDEN  
FED. HOUSE OF DETENTION  
Respondents

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.  
SOUTHERN DISTRICT OF NEW YORK )

RAPHAEL MELLAPE, being duly sworn, deposes and says:

1. That I am presently incarcerated and in the custody of the Warden of the Fed. House of Detention and that I make this affidavit in support of my Petition for a Writ of Habeas Corpus.

2. That I am 53 years of age and born in Santiago, Chile, on 11/21/1921, being a widower with 5 children.

3. That I was arrested on 3/7/74 at 9:30 a.m. at the home of Yolanda Leon, my friend and common-law wife, located at Sierra Bella St. No. 2416, Santiago, Chile, without a Court Order, under the pretext that I knew the whereabouts of Mr. Christian Alvear, who was being sought by the authorities for alleged violations of the law.

4. That as I did every morning at 8 a.m. I had gone to open my butcher shop and to leave my niece Lily Vargas M. in charge of the business and of the employees. Afterwards, I would go to the slaughterhouse, and then to have breakfast. Upon entering the house, a man came running after me, put a machine gun in the back of my neck and made me go in with hands up in the air. There were 3 other men inside, plain clothesmen with weapons in hand (my wife and 2 daughters, dressed in their pajamas, were crying). The house was turned upside down: papers, clothes and objects all over the floor. When they were bringing me out they said to them: "Don't worry, your dad will return; we are going to ask him some questions about somebody and he'll come back home."

5. That they then put me inside my own car, and on the way, a lieutenant called Gandolfi, said to me: "If Christian Alvear were to come by here this instant, I swear to God that -immediately- you will go to your home."

6. That these people took me to "Rogelio Ugarte" police headquarters and another place (or station), in the neighborhood of "Rosita Renard", an hour later. Once there, they immediately put me in a room next to guards: they undressed me and tied me by the hands (in a cross position) to a hulk which was placed on the floor. They then stuffed my mouth with dirty rags which they took out in front of me. From a suitcase they took out an electric generator to produce electric shocks. They did all this with rehearsed calmness, which made me tremble to death because of the threat of death.

7. After all the filth and torture that they inflicted on me, they blindfolded me and strapped my head down to the bulk, by the forehead, and started to whip me, in the midst of insults and terrible threats which are difficult to transcribe. They told me to move a finger of the right hand whenever I was ready to tell the truth. Once in a while they would stop for a sometime in order to ask me questions and then they would continue with more cruelty. When I couldn't take it any more, I would raise a finger, but it was only so I could breathe.

8. When they were hitting me, one said: "go and call the chiefs so they can see that this bastard knows nothing." A while later the door was opened and I heard very soft steps. They started the electric shocks again for quite a while, but more brutally, on my genitals. It seems they were satisfied because they stopped.

9. They spoke English very softly, but since I was blindfolded, I did not see their faces. For almost 3 hours they gave me shock treatment, and Karate blows (there was a wall clock by the guard post). After a few hours of interval they tied me again and started the shocks. And with their feet they pushed a pot full with excrements towards me. I vomited and they laughed. When they got tired they locked me up in a dungeon. They kept me there for 4 days, without food and water. They did bring food and water regularly to a police dog they left next to the door.

10. After 4 days, the sergeant told me to sign a book; then I was free. I signed very happily, but it was a lie. What happened was that a Writ of Habeas Corpus had been filed in court for me. My signing out meant that I was no longer in custody and therefore they could fool the judicial authorities, since I no longer appeared as such.

11. Early the next day, they picked me up and one of them told me that he had wiped out his ass with the Justice's Writ, and that I would be sorry for such petition. They led me into a vehicle and took me to the port of Valparaiso. On the way there they threatened me to stop and kill me if I didn't say where Mr. Alvarez was hiding. Galdolfi said: "if 'Skinny' Alvarez, or Lira, are not found it will be worse for you since you are going to pay the consequences."

12. When we arrived, they turned me into the naval prison of "Silva Palma". I thought that was the end of me. The sailors put a black hood down to my shoulders, and made me walk up and down a stairway, with threats that I was going to be thrown into the sea. And that they were going to shoot me, or that they were going to throw me into an electrified pool. They took my belt, my shoe strings and everything that could be used to commit suicide, and threw me in a cell where they gave me some food.

13. On the third day, they took me out to question me. I was as usual, hooded and threatened. They pushed me into a building where they were questioning and whipping men and women alike. They gave me more electric shocks and karate blows but this time without being tied down. They laughed at the way they made me jump with the electricity. They would take me outside and leave me standing in the sun, or at night they would leave me in the cold. (They did this several times in order to destroy me psychologically, since they would not question me at those times).

14. After fifteen days, they called me (I thought it was to renew the tortures), but they said I only had to sign a paper in which I was saying that they treated me well. I signed and finally learned that I was going to the naval prosecutor's office.



He told me that I was wanted in the United States and other countries. They took some pictures of me and the photographer told me that they were for the US agent, that were outside the office and that had been directing the whole thing. As soon as this was done, they took me back to the jailhouse in Valparaiso.

15. Then on May 3rd, 1974 they took me out violently with all my belongings to a naval office and made me sign a document which supposedly said: "That by order of the Ministry of the Interior, I was set free, because of insufficient reasons." They put me inside a military transport wagon, heavily guarded and escorted by other vehicles, since there were others with me. They took us to Santiago and one point of the journey, they stopped and lieutenant Gandolfi showed up revolver in hand, saying: "Whoever wants to get off, can do so and flee, so we can make him shit his pants with our bullets". Of course, we made belief we didn't hear him.

16. When we arrived in Santiago, they went around in circles, with the obvious purpose of distracting us from knowing where we were. They took us to a police quarters, the No. 13 Commissaryship of Carabineers, without having registered us in the official book. They put five of us in a very small cell and did not allow us to call our families. In the morning they took us out, heavily guarded in a direction not known to us. We stopped in a prisoner's concentration camp and they added another prisoner (Sergio Poblete) to the group. He told us that we were being sent to the United States since he had read it in the morning papers.

17. We arrived at Pudahuel, and they took me out secretly. An American (US) doctor, who also travelled in the plane) examined my heart and found me very excited, and still had the nerve to ask me: "Why are you so excited"? He gave me some drugs and I got on the wagon.

18. The police patrol went around the place in circles so no one would see us, and entered the airport through the back entrance. It parked next to a Braniff Airlines plane. They made us board the plane. At this time, I was fully drugged and they had to help me. (I was told that there were no relatives, photographers or any representatives; only policemen from Chile and other countries). Mr. Charles Willis Cecile, Jr., and Mr. George F. Magules of the US were directing the operation. (I have the list of passengers of that flight).

19. They brought us handcuffed to New York. I told them that they had brought me by mistake, but they continued to threaten me, and said that they had other means to make me talk. They showed me pictures of my family and threatened to do something similar to them, particularly my wife, if I didn't talk.

20. In here, the US Attorney placed me in maximum security. And threaten me to send me to another prison. He made me go to Court (the Marshal's bull pen) every day even though no one had requested me, in order to destroy my nerves. He even called other Chileans and tried to force them to testify against me.

21. I am a very hard-working man all my life. And I can prove it. I have an 18 years old daughter, the youngest of my former marriage. She was alone at the time of my arrest, and she was so shocked by this incident that she was unable to continue her education. The youngest one, 13 years of age, went insane, and had to be interned in an asylum, all this from the impression of these events.

*Spent to tell me  
this 24th day Sept. 1974*

Rafael Kellaf

RECEIVED BY THE ACT OF JULY 7, 1956  
12-10-1956

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

(CES, JR.)

AFFIDAVIT

-against-

73CR751

RAFAEL LHA, etal

Defendants

-----X  
STATE OF NEW YORK)

)SS.:

COUNTY OF KINGS )

JOHN C. CORBETT, being duly sworn, deposes and says:

I am assigned counsel under the Criminal Justice Act for the defendant, RAFAEL MELLAFE CAMPOS, indicted herein under the name of RAFAEL LHA. This affidavit is made in further support of the defendant's motion for a dismissal of the within indictment on the grounds that he was deprived of his rights under the Fourth Amendment to the Constitution of the United States and that he has been denied due process of law by this prosecution.

We have had a hearing in which both the defendant and a representative of the United States Government testified. The facts are simple and stand undisputed. Apparently the United States Government by its agency, The Drug Enforcement Administration, formerly known as the Bureau of Narcotics and Dangerous Drugs, conducts operations in South America. One LOUIS BACHRACH is in overall charge of the operations, according to the agent who testified, with his territory running from Panama to the tip of South America. In Chile we have CHARLES FHANGULIS who is the special agent in charge, assisted by CHARLES CECIL, and their office is in Santiago, Chile. CECIL testified that he had conducted an investigation of this defendant, although he insisted on the use of the word investigation rather than surveillance, and that his investigation consisted of checking the defendant's long distance telephone calls. He denied any electronic surveillance or wiretaps. He then admitted requesting the arrest of this defendant, as well as a group of



others, said request being made to the Chilean police. In response to this request, on March 7th, 1974, this defendant, a butcher who testified that he maintains a butcher shop in Santiago, Chile, was arrested by the Chilean police. This defendant dealt at great length on the tortures he was subjected to by the Chilean police. He testified that at one point while he was blindfolded undergoing electric torture he heard voices speaking in English but as he was blindfolded he could not identify them. The defendant was held for a period of about 40 days and then brought to the Office of Naval Prosecutor in Valparaiso, Chile, where he was asked to sign a document, which he believed to be the expulsion decree which has been offered in the original motion papers. He states that at that time in the corridor in the building where the Office of the Naval Prosecutor is located he saw CHARLES CECIL, the American agent, and another individual who was identified to him by one of his fellow prisoners as CHARLES FRANGULIS, the American agent in charge.

This defendant and others were then taken and brought to the airport by what he describes as "going in circles" and brought to an office in the airport where he was examined by a physician who gave him medication of some sort. He was handcuffed all this time and then was placed on board a Braniff Airline plane. Attached to the moving papers as Exhibit "A" is a copy of the passenger list of this flight and the group of passengers pertaining to this case are headed by the name of CHARLES CECIL under the designation of "Embassy Group". Following in ink the names of individuals identified as Chilean police are the names in ink of a number of the defendants including MELLAFE. He was brought to the United States and subjected to this prosecution. His expulsion was done by the Chilean government under decree law 21 a full translation of this, accompanied by its Spanish equivalent, is annexed hereto as Exhibit A". I do not have an opinion by a Chilean lawyer as to Decree Law No. 81, but I will point out to the Court that this Decree is one of the 101st Decree Laws issued by the governing Junta of the Republic of Chile. These Decrees

were published under the title '100 DECREE LAWS DICTATED BY THE GOVERNING JUNTA OF THE REPUBLIC OF CHILE and the book was published by Editorial Juridical De Chile with the first edition being published in November, 1973 and the third edition being published in December, 1975. There is no complicated statement in Decree Law No. 81. This provides the means of getting out of the country those persons who were distasteful to the Junta. The language is the simple language of a military order and it is well to note that the military tribunal of Chile is given jurisdiction of offenses under this article. The translation attached shows that there is no complication of Chilean law which would require the services of an expert on Chilean law for purposes of interpretation. The Decree Law No. 81 is in simple language. It is well to note that attached to the moving papers as Exhibit "B", is the decree of expulsion to which these defendants were subjected, and the Court's attention is respectfully called to that section of the Decree which states "pursuant to Article 2 of Decree Law No. 81 of 1973". In other words, the defendants were sent out of Chile pursuant to Article 2 of Decree Law No. 81. A translation of Article 2 is appended to my original moving papers as Exhibit "C" and for purposes of clarity and argument, Article 2 is again set forth herein although it is part of the translation attached.

.....Article 2: In cases contemplated under Article 418 of the Code of Military Justice, such as at times or during a state of war, and when it is so required by the high interests of the security of the State, the Government shall be able to order the expulsion or abandonment of the country by given persons, be these nationals or foreigners, by way of a decree which shall bear the signatures of the Ministers of the Interior and of the National Defense.

Those who are objects of these measures of expulsion or abandonment of the country shall be able to freely choose their place of destination.

There is no magic or mystery in the second paragraph of Article 2 which states clearly that those who are being expelled from the country shall be able to freely choose their place of destination. A close reading of Article 2 and of the entire Decree Law No. 81 will show



that there is no variation. Those who are to be expelled from the country "shall be able to freely choose their place of destination". In this case this defendant among other defendants who are presently before this court, after a period of imprisonment and the issuance of this Decree, was then turned over to the custody of the American authorities who were actively assisted by Chilean police. As a matter of fact, beside the Chilean police who were present on board the Braniff Airline, MR. CECIL, the American agent testified that he had six agents of the Drug Enforcement Administration on this plane.

The facts in this case stand undisputed. The American Government, by its agents, for its own purposes, requested the arrest of this defendant and others. Wishing to oblige the American Government the Junta complied. This defendant has testified that he was tortured and questioned as to his activities. Surely we cannot ignore the fact that the Chilean police, in pleasing their American counterparts, subjected this defendant to questioning and can we close our eyes to the fact that the results of any questioning would have been turned over to the American agents of the Drug Enforcement Administration. The extradition of this defendant and others was not requested by the American authorities but this highly illegal and high handed procedure in a foreign country was followed by the agents of the American Government. MELLAFE testified that he was never in the United States in his entire life and no evidence was introduced by the Government to show that he had ever been here. For purposes of its own the American Government decided to have him extracted from Chile and brought about his arrest, interrogation and expulsion by the Chilean police. While we are not concerned with Chilean law, and particularly Article 2 of such law, by which the Chilean government seeks to cover the alleged legality of his expulsion, this defendant would have the right to freely choose the place where he was to go. Surely the American Government at this point cannot sit back and say we do not know anything about Decree Law No. 81 nor do we know anything about it

except the fact that the Chilean government wished to expel this man from the country and fortunately as we wanted him we were on hand to take him into custody. This is not so. This defendant was turned over to the American agents in a foreign country and was taken from that country by American agents. Much has been made of the fact that he travelled on a civilian airline. Is there any doubt that he had no right to leave the custody of American agents at Pudahuel airport in Chile where he was turned over to their custody? Can we say that he was expelled from Chile at that point and then could have said to the Americans "I do not choose to go to the United States"?

The entire procedure followed by the Government to secure the presence of this defendant, and the others, in the United States smacks of the high handed procedures which we have busily condemned in the actions of other countries. We must recognize the fact that this defendant was seized by the American government, by its own admission through its agent CECIL, in a foreign country, interrogated with torture by the police of that country, and then taken to an airport where still in handcuffs he was delivered to American authorities and brought to the United States. During the hearing much was made by the very capable Assistant United States Attorney to the effect that once in American hands he was not tortured and was even provided with a physician to examine him as to the state of his health. This is extremely laughable and would perhaps paint the Government agents as individuals solicitous of the health and welfare of their prisoners. At the point in Pudahuel Airport in Chile when this defendant and the others whose cases are pending before American Courts were turned over to the Americans they were prisoners being expelled from their country illegally under Chilean law. We cannot close our eyes to the illegality followed by ignoring Decree Law No. 81 and saying it doesn't concern us. This expulsion was accomplished by American authorities working with the Chileans and if the illegality of the Chileans' actions is apparent, it is because of their desire to cooperate and to work



cannot  
with the American authorities. The Government/at this time, nor can its  
agents, deny any knowledge of the existence of Decree Law No. 81 nor  
state that it doesn't concern this Court.

Surely the argument of the Government which is briefly stated  
as the fact that this defendant was expelled from the country and as we  
happen to have an indictment against him we commenced to prosecute him  
here, overlooks the basic facts. We procured the issuance of this expulsion  
decree in violation of Chilean law, we procured the arrest of this defendant  
and surely resident agents who have worked in a country such as Chile  
must have been aware of the tortures and rigors to which this defendant  
and others were subjected. MR. CECIL testified that he did not visit  
him while he was being tortured, but he said that Chilean police kept him  
advised of the various places to which this defendant was moved from time  
to time. We cannot close our eyes to the fact that any statements made  
by this defendant under torture were very likely turned over to the American  
authorities. This is not a case where we can go on the cold record.

This is a matter where the American authorities have acted in violation  
of our Constitution, in violation of the principles of the United Nations  
Charter, and in violation of the human rights of this defendant and others.

Surely the interest of justice require this Court to say to  
the agents of the American Government that they cannot act in this manner.  
That in our endeavors to control the drug traffic we are acting in violation  
of human rights. Your deponent, who represents SERGIO LAZO VARGAS,  
who was also taken from Chile on the same plane, has just come into  
possession of a writ of habeas corpus which was sought by the relatives  
of SERGIO LAZO in the Chilean courts. I have appended the copy of this  
writ of habeas corpus, together with a certified translation. While the  
relatives of MELLAFE never sought legal help to get a habeas corpus  
the relatives of LAZO did. It is rather interesting to note on Page 3 of  
the translation that it is there stated by one of the Chilean courts that  
an attache of that Court telephoned the Department of Control of Drugs

and Narcotics of the Uniformed Police, there spoke to one LUIS SEPULVEDA who stated that SERGIO LAZO VARGAS had been requested by the Bureau of the Narcotics of the United States. This entry is dated May 4th. The decree of the Chilean court in the LAZO case is to be found on Page 3 and 4 of the translation and the Court of Appeals of Chile there direct the Ministry of Foreign Affairs to give the reasons and state the international law by virtue of which LAZO was to be transmitted to the United States accompanied by copies of the resolutions, decrees and sentence of extradition that correspond and in the second paragraph, the court directs the General Director of the Police to suspend the transfer of LAZO to foreign territory. The same facts apply to MELLAFE in that MELLAFE was on the same plane. The unfortunate part of it is that MELLAFE and LAZO were already sent in to the United States by the time the court directed that he should not be sent until such time as the Court of Appeals of Chile could inquire into the matter.

The Chilean court had no knowledge of the procedure by which this entire transaction took place and like any court wanted to sit down and find out under what claim of legality the Junta was acting. Admittedly the LAZO papers are not part of the MELLAFE case, but as he was on the same shipment, the same Decree Order and brought here on the same plane, it is felt that this habeas corpus in the case of LAZO will be of value to this court.

On the facts shown on the moving papers, and the hearing held before this Court, it is obvious that the actions of the American agents are such as to make the dismissal of this indictment mandatory.

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JOHN C. CORBETT

SWORN to before me this  
10th day of October, 1974

*Josephine De Vincentis*  
JOSEPHINE De VINCENTIS  
Commissioner of Deeds, City of N. Y. #251  
Certificate filed in Kings Co. Clks. Office  
New York County Clks. #40  
Commission Expires June 23, 1976



## DECRETO LEY N° 81

(Publicado en el Diario Oficial N° 28.694, de 6 de Noviembre de 1973)

## MINISTERIO DE DEFENSA NACIONAL

Subsecretaría de Guerra

**FIJA, POR RAZONES DE SEGURIDAD DEL ESTADO, SANCIONES PARA LAS PERSONAS QUE DESOBEDEZCAN EL LLAMAMIENTO PUBLICO QUE INDICA DEL GOBIERNO**

Decreto ley N° 81.— Santiago, 11 de Octubre de 1973.—  
Vistos: Lo dispuesto en los decretos leyes N.os 1 y 5, de 11 de Septiembre de 1973, y

Considerando:

1°— La necesidad de que las personas requeridas por la autoridad obedezcan el llamamiento que se les hace, por exigirlo la seguridad del Estado;

2°— La conveniencia de sancionar penalmente y acorde con la seguridad del Estado la renuencia en el obediencia a ese llamamiento;

3°— La necesidad, por otra parte, de velar por la seguridad del Estado, el orden interno y la normalidad de las actividades nacionales, en consonancia con la situación que el país vive y que los hechos descubiertos han evidenciado;

La Junta de Gobierno ha acordado y dicta el siguiente

Decreto ley:

**Artículo 1°**— El que requerido por el Gobierno, por razones de seguridad del Estado, desobedezca el llamamiento que públicamente se le haga para que se presente ante la autoridad sufrirá la pena de presidio menor

en su grado máximo o extrañamiento mayor en su grado medio.

Sin perjuicio de la responsabilidad penal, la autoridad dispondrá administrativamente y desde luego, consumado que sea el delito, la cancelación del pasaporte respectivo, si el inculcado se encontrare en el extranjero.

El llamamiento se notificará por su publicación en el Diario Oficial, fecha en que se presumirá conocido, de derecho, y el delito se entenderá consumado cinco días después de esa publicación, si el llamado se encontrare en el territorio nacional, y 40 días después de ella, si estuviere en el extranjero.

El conocimiento del delito corresponderá a los Tribunales Militares y su juzgamiento se ajustará a las prescripciones del Código de Justicia Militar.

No eximirá ni atenuará la pena la circunstancia de que, de obedecer al llamamiento, el inculcado pueda verse expuesto al procesamiento por otros delitos.

Si el requerido por el Gobierno fuere responsable de delitos, el hecho de presentarse al llamamiento se considerará como circunstancia atenuante privilegiada respecto de esos delitos, debiendo el Tribunal imponer la pena inferior en un grado y pudiendo rebajarla en dos o tres grados, según la circunstancia, a la que correspondería en otro caso.

El Tribunal podrá asimismo, en tal evento, aplicar en lugar de la o las penas privativas de libertad que correspondieren la de extrañamiento por el doble del tiempo de duración de aquélla o aquéllas.

**Artículo 2°**— En los casos contemplados en el Art. 418 del Código de Justicia Militar, como tiempo o estado de guerra, y cuando así lo requieran los altos intereses de la seguridad del Estado, el Gobierno podrá disponer la expulsión o abandono del país de determinadas personas, extranjeros o nacionales, por decreto fundado que llevará las firmas de los Ministros del Interior y de Defensa Nacional.

Los que sean objeto de las medidas de expulsión o abandono del país podrán elegir libremente el lugar de su destino.

*Artículo 3°*— Los que hubieren salido del país por la vía del asilo, los que hubieren abandonado sin sujetarse a las normas establecidas, hubieren sido expulsados u obligados al abandono del país, o estuvieren cumpliendo penas de extrañamiento no podrán reingresar sin autorización del Ministro del Interior, la que deberá solicitarse a través del Consulado respectivo.

El Ministro del Interior podrá denegar fundadamente, por razones de seguridad del Estado, la autorización solicitada.

*Artículo 4°*— El que ingrese clandestinamente al país, burlando en cualquier forma el control de dicho ingreso, siempre que las circunstancias o antecedentes permitan presumir al Tribunal que lo hace para atentar contra la seguridad del Estado, será sancionado con la pena de presidio mayor en su grado máximo a muerte.

Se presumirá la antes aludida finalidad respecto del que hubiere salido del país por la vía del asilo, lo hubiere abandonado sin sujetarse a las normas establecidas, hubiere sido expulsado u obligado a abandonar el país, hubiere cometido el delito del Art. 1° o reingresare quebrantando la condena de extrañamiento que se le hubiere impuesto.

*Artículo 5°*— Los cómplices y los que alberguen, oculten o proporcionen la fuga al culpable de los delitos previstos en el presente decreto ley, serán sancionados con la pena correspondiente, aumentada en un grado.

El conocimiento del delito corresponderá a los Tribunales Militares y su juzgamiento se ajustará a las normas del Código de Justicia Militar.

Regístrese en la Contraloría General de la República, publíquese en el Diario Oficial e insértese en los Boletines Oficiales del Ejército, Armada, Fuerza Aérea y en la Recopilación de Leyes y Decretos de la Contraloría General de la República.— AUGUSTO PINOCHET UGARTE, General de Ejército, Presidente de la Junta de Gobierno.— JOSE T. MERINO CASTRO, Almirante,

Comandante en Jefe de la Armada.— GUSTAV GUZMAN, General del Aire, Cde. en Jefe de la Fuerza Aérea.— CESAR MENDOZA DURAN, General de Brigada, Comandante General de Carabineros.— Patricio Carvajal, Comodoro, Vicealmirante, Ministro de Defensa Nacional.— Bonilla Bradanovic, General de División, Ministro del Interior.— Gonzalo Prieto Gándara, Ministro de



DECREE LAW NO. 81

(Published in the Official Diary No. 28,694 of November 6, 1973)

**MINISTRY OF NATIONAL DEFENSE**

Undersecretariat of War

**FIXES SANCTIONS FOR REASONS OF SECURITY OF THE STATE, FOR THOSE PERSONS WHO SHALL DISOBEY THE PUBLIC CALL INDICATED BY THE GOVERNMENT.**

Decree Law No. 81. ---Santiago, October 11, 1973

In accordance with the dispositions of Decree Laws No. 1 and 5 of September 11, 1973, and

**WHEREAS**

1. Persons who are requested by the authority they shall obey the call put to them because it is necessary for the security of the State.
2. The convenience of sanctioning criminally and in accord with the security of the State he who shall not comply with that call.
3. The necessity, on the other part, to look after the security of the State, the internal order and the normalcy of national activities, in accordance with the situation that the country is living (under) and that the acts that have been discovered have shown;

The Government Junta has accorded and dictates the following

**Decree Law**

Article 1<sup>o</sup> -- He who soever shall be requested by the State, for reasons of the security of the State, disobeys the public call made to them so that he may come before the authority shall suffer the sentence of minor imprisonment in its maximum degree or major expulsion in its medium grade.

Without prejudice for the penal responsibility, the authority administratively and of course, and the crime having been consummated, the cancellation of the respective passport, should the inculpatated person be abroad.

Notice of the call shall be published in the Official Diary, it is assumed that it is a known fact, by law, the crime shall be understood to be consummated five days after its publication, should the person called be located within the national territory, and 40 days after such should he be abroad.

The recognition of the crime shall be heard by the Military Tribunals and its judgment shall be in accordance with the rules of the Military Justice Code.

It shall not exempt or lessen the sentence to obey the call should the inculpatated one be processed for other crimes.

If such person required by the Government should be responsible for crimes, the fact that he answers the call shall be regarded as extenuating circumstances privileged to those crimes, and the Tribunal shall impose the lesser sentence in a grade and it shall be able to reduce it in two or three grades, in accordance with the circumstances, to that which corresponds in the other case.

The Tribunal shall be able to in such case, apply in its place such or any such sentences that shall withhold liberty that might correspond to expulsion for twice the time for the duration of that one.

Article 2° -- In cases contemplated under Article 418 of the Code of Military Justice, such as at times or during a state of war, and when it is so required by the high interests of the security of the State, the Government shall be able to order the expulsion or abandonment of the country by given persons, be these nationals or foreigners, by way of a decree which shall bear the signatures of the Ministers of the Interior and of the National Defense.

Those who are objects of these measures of expulsion or abandonment of the country shall be able to freely choose their place of destination.

Article 3° -- Those who shall have departed the country by way of exile, those who have abandoned without being subject to established rules, would have been expelled or obliged to leave the country, or would have been serving banishment sentences, shall not be able to return without the authorization of the Ministry of the Interior which shall be requested through the respective Consulate.

The Minister of the Interior shall with cause be able to deny, for reasons of State security, the authorization requested.

Article 4° -- Whosoever shall enter the country clandestinely, making a mockery of any rules which control such entry, inasmuch as the circumstances and the reasons permit the Tribunal to presume that it is being done in order to attempt against the security of the State shall be punished with the maximum sentence of imprisonment for life.

This shall be presumed upon people having left the country in exile, should they have abandoned the country without complying with the existing rules, or has been expelled or forced to leave the country, should the crime of Article 1 have been committed or breaking the banishment sentence imposed on him.

Article 5° -- The accomplices and those who shall harbor, hide or make the flight possible of those guilty of the crimes dealt with in the present decree, shall be sanctioned with the corresponding punishment, increased in one degree.

Military Tribunals shall hear those cases and their judgments shall be pursuant to the rules of Code of Military Justice.

Registered in the Controller General of the Republic, published in the Official Diary and inserted in the Official Bulletins of the Army, Navy, Air Force, and in the recompilation of Laws and Decrees of the Controller General of the Republic. Signed - AGUSTO PINOCHED UGARTE, General of the Army, President of Governing Junta - JOSE T. MERINO CASTRO, Admiral Commander-in-Chief of the Navy - GUSTAVO LEIGH GUZMAN, General of the Air Force, Commander-in-Chief of the Air Force--CESAR MENDOZA DUKAN, General, Director General of Police --Patricio Carfajal Prado, Vice-Admiral, Minister of National Defense--Oscar Bonilla Bradanovic, General Division, Minister of Interior -- Gonzalo Prieto Gandara, Minister of Justice.



JEN:mhr

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA	:	
-v-	:	<u>AFFIDAVIT</u>
RAFAEL LIRA, et al.,	:	73 Cr. 751
Defendants,	:	(C.E.S., Jr.)

-----X

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK)

JAMES E. NESLAND, being duly sworn, deposes  
and says:

1. I am an Assistant United States Attorney  
in the office of Paul J. Curran, United States Attorney  
for the Southern District of New York and am assigned  
to the prosecution of the above-entitled action. I  
make this affidavit in further support of the Government's  
position that LIRA's pending motion to dismiss the  
indictment under United States v. Toscanino, Dkt. No.  
73-2732 (2d Cir. May 15, 1974), on which an evidentiary  
hearing has been had on October 7, 1974, should be  
denied in all respects.

2. It was necessary for the United States  
government to seek the expulsion of LIRA from Chile  
because the provisions of the extradition treaty in  
effect between the United States and Chile precluded his  
extradition. (A copy of the Treaty between the

United States and Chile for the extradition of criminals is attached hereto as Exhibit A.) Article II of the Treaty enumerates the 12 crimes for which extradition will be granted. Absent from that list are crimes involving narcotics and trafficking in narcotics. Additionally, Article V of the Treaty expressly excludes extradition from each country of its own citizens. Thus, LIRA was not subject to extradition under the treaty from Chile on Indictment 73 Cr. 751.

3. Since LIRA could not be extradited, the United States government requested that the Chilean government consider his expulsion. Acting on that request, the Chilean government entered Decree No. 807 expelling LIRA and others from Chile. LIRA claims that at no time did the Chilean government permit him to choose a country. Rather, his government turned him over to the United States government. This violated Decree Law No. 81, LIRA alleges, because that decree provides that persons under expulsion shall be permitted to choose a destination. That allegation, the Government submits, is of no concern here. The recent decisions of Judge Weinstein in United States v. Roblete, 74 Cr. 383 (E.D.N.Y. July 8, 1974), and more particularly, Judge Gagliardi in United States v. Francisco Guinart, 73, Cr. 1094 (S.D.N.Y. October 8, 1974) clearly hold that the interpretation of Chilean law, as well as the actions



JEN:art

of the Chilean government pursuant thereto, are not proper matters for consideration. These decisions accord with the long standing "act of state doctrine." This doctrine was given its "classic American Statement," Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964), in Underhill v. Hernandez 168 U.S. 250 (1897):

"Every sovereign state is bound to respect the independence of every other sovereign state, and the court of one country will not sit in judgment on the acts of the government of another, done within its own territory." Id. at 252

See Oetjen v. Central Leather Co., 246 U.S. 297 (1918);

Ricand v. American Metal Co., 246 U.S. 304 (1918).

WHEREFORE, it is respectfully requested that LIRA's motion for dismissal of Indictment 73 Cr. 751 be denied.

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JAMES E. NESLAND  
Assistant United States Attorney

Sworn to before me this

day of October , 1974

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Notary Public

April 17, 1900.

*Treaty between the United States and Chile providing for the extradition of criminals. Signed at Santiago, April 17, 1900; ratification with amendments advised by the Senate, December 18, 1900; ratified by the President, May 24, 1902; ratified by Chile, February 26, 1902; ratifications exchanged at Washington, May 27, 1902; proclaimed May 27, 1902.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

### A PROCLAMATION.

#### Preamble.

Whereas a Treaty between the United States of America and the Republic of Chile providing for the extradition of fugitives from justice was concluded and signed by their respective Plenipotentiaries at Santiago, on the seventeenth day of April, one thousand nine hundred, the original of which Treaty, being in the English and Spanish languages is, (as amended by the Senate of the United States) word for word as follows:

#### Contracting parties.

The United States of America and the Republic of Chile, being desirous to confirm their friendly relations and to promote the cause of justice, have resolved to conclude a treaty for the extradition of fugitives from justice between the United States of America and the Republic of Chile, and have appointed for that purpose the following Plenipotentiaries:

#### Plenipotentiaries.

The President of the United States of America, Henry L. Wilson, Envoy Extraordinary and Minister Plenipotentiary of the United States in Chile, and the President of Chile, Señor Don Rafael Errázuriz Urmeneta, Minister of Foreign Relations of Chile.

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

#### ARTICLE I.

Reciprocal delivery of persons charged with crimes.

The Government of the United States and the Government of Chile mutually agree to deliver up persons who, having been charged

Los Estados Unidos de América i la República de Chile, deseando confirmar sus amistosas relaciones i promover la causa de la justicia, han resuelto celebrar un tratado para la estradicion de los prófugos de la justicia entre los Estados Unidos de América i la República de Chile, i han nombrado al efecto los siguientes Plenipotenciarios:

El Presidente de los Estados Unidos de América, al señor Henry L. Wilson, Enviado Extraordinario i Ministro Plenipotenciario de los Estados Unidos en Chile, i el Presidente de la República de Chile, al señor don Rafael Errázuriz Urmeneta, Ministro de Relaciones Exteriores de Chile:

Quienes, después de comunicarse sus respectivos Plenos Poderes, que encontraron en buena i debida forma, han acordado i concluido los artículos siguientes:

#### ARTÍCULO I.

El Gobierno de los Estados Unidos i el Gobierno de Chile convienen en entregarse mutuamente las personas que, habiendo sido acusa-



or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek asylum or be found within the territories of the other: Provided, this shall only be done upon evidence of criminality according to the laws of the place where the fugitive or person sought shall be found, would justify his or her apprehension and commitment for trial if the crime or offense had been there committed.

## ARTICLE II.

Extradition shall be granted for the following crimes and offenses:

1. Murder, comprehending assassination, parricide, infanticide, poisoning; attempt to commit murder; manslaughter, when voluntary.

2. Arson.

3. Robbery, defined to be the taking of feloniously and forcibly taken from the person of another money, goods, documents or other property by violence or putting in fear; burglary.

4. Forgery, or the utterance of forged papers; the forgery or falsification of official acts of Government, of public authorities, or courts of justice, or the utterance of the thing forged or falsified.

5. The counterfeiting, falsifying or altering of money, whether in or paper, or of instruments of debt created by national, state, provincial, or municipal governments, or of coupons thereof, or bank notes or the utterance or circulation of the same; or the counterfeiting, falsifying or altering of seals of state.

6. Embezzlement by public officers; embezzlement by persons hired or salaried, to the detriment of their employers where in either class of cases the embezzlement exceeds the sum of two hundred dollars; larceny.

7. Fraud or breach of trust by baillee, banker, agent, factor,

or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek asylum or be found within the territories of the other: siempre que ello se haga solo en virtud de pruebas tales de culpabilidad que, segun las leyes del lugar donde el prófugo o la persona acusada se encuentre, habria habido mérito para su aprehension y enjuiciamiento, si allí se hubiera cometido el crimen o delito.

## ARTÍCULO II.

Se considerará la extradición por los siguientes crímenes i delitos:

1. Homicidio, comprendiendo el asesinato, parricidio, infanticidio i envenenamiento; tentativa de homicidio, homicidio impremeditado pero voluntario.

2. Incendio.

3. Robo, definido como acto de quitar maliciosa i forzosamente dinero, bienes, documentos u otra propiedad a otra persona, con violencia o intimidacion en ella; robo con fuerza en las cosas.

4. Falsificacion, o circulacion de papeles falsificados: imitacion o falsificacion de documentos oficiales del Gobierno, de las autoridades públicas o de los tribunales de justicia, o la circulacion de la cosa imitada o falsificada.

5. El delito de contrahacer, falsificar o alterar monedas, sea de metal o papel, de instrumentos de crédito creados por el gobierno nacional, por el de un estado, provincia o municipalidad, o de sus cupones, o de billetes de banco, o la emision o circulacion de los mismos; o el delito de contrahacer, falsificar o alterar sellos del Estado.

6. Malversacion cometida por empleados públicos: malversacion cometida por personas contratadas o asalariadas, en detrimento de sus patrones: siempre que en uno i otra clase de casos la malversacion exceda de la suma de doscientos pesos de 48d: hurto.

7. Fraude o abuso de confianza de un depositario, banquero,

Extraditable crimes.

Murder, etc.

Arson.

Robbery, etc.

Forgery.

Counterfeiting, etc.

Embezzlement.

Breach of trust, etc.

trustee, or other person acting in a fiduciary capacity, or director or member or officer of any company, when such act is made criminal by the laws of both countries and the amount of money or the value of the property misappropriated is not less than two hundred dollars.

agente, factor, tenedor de bienes u otra persona que actúe en carácter fiduciario, o de un director, miembro o empleado de una compañía, cuando las leyes de ambos países declaran criminal semejante acto i el dinero o el valor de los bienes defraudados no es inferior a doscientos pesos de cuarenta i ocho pesillos.

Perjury.

8. Perjury; subornation of perjury.

8. Perjurio; instigacion a perjurar.

Rape, etc.

9. Rape; abduction; kidnapping.

9. Violacion; rapto; sustraccion de personas.

Injuries to railroads.

10. Willful and unlawful destruction or obstruction of railroads which endangers human life.

10. Destrucion u obstruccion voluntaria e ilegal de ferrocarriles, poniendo en peligro la vida de personas.

Crimes committed at sea.  
Piracy.

11. Crimes committed at sea.  
(a) Piracy, by statute or by the laws of nations.

11. Delitos cometidos en el mar.  
(a) Pirateria, segun la lei o el Derecho Internacional.

Revolt, etc.

(b) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

(b) Motin, o conspiracion para amotinarse de dos o mas personas a bordo de un buque en alta mar contra la autoridad del capitán.

Destroying vessels, etc.

(c) Wrongfully sinking or destroying a vessel at sea, or attempting to do so.

(c) Sumersion o destrucion dolosa de un buque en el mar, o tentativa de hacerlo.

Assaults on ship board.

(d) Assaults on board a ship on the high seas with intent to do grievous bodily harm.

(d) Atentados a bordo de un buque en alta mar con el propósito de causar daños corporales graves.

Slave trading, etc.

12. Crimes and offenses against the laws of both countries for the suppression of slavery and slave trading.

12. Crímenes i delitos contra las leyes de ambos países relativas a la supresion de la esclavitud i a la trata de esclavos.

Complicity.

Extradition is also to take place for participation in any of the crimes and offenses mentioned in this Treaty, provided such participation may be punished, in the United States as a felony, and in the Republic of Chile by imprisonment at hard labor.

Tambien habrá lugar a la extradicion por la participacion en cualquiera de los crímenes i delitos mencionados en este tratado, siempre que dicha participacion sea castigada, en los Estados Unidos como una felonía, en la República de Chile, con presidio u otras penas mayores.

### ARTICLE III.

### ARTÍCULO III.

Requisitions.

Requisitions for the surrender of fugitives from justice shall be made by the diplomatic agents of the contracting parties, or in the absence of these from the country or its seat of government, may be made by the superior consular officers.

La demanda de entrega de prófugos de la justicia se hará por los agentes diplomáticos de las Partes Contratantes, o en su ausencia en el país o en la residencia del Gobierno, por los funcionarios consulares superiores.

Copy of sentence or warrant.

If the person whose extradition is requested shall have been convicted of a crime or offense, a duly authenticated copy of the sentence of the court in which he was con-

Si la persona a quien se solicita hubiere sido condenada por el crimen o delito, exhibirá una copia debidamente autenticada de la sentencia de la corte en la que lo haya



victed, or if the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime has been committed, and of the depositions or other evidence upon which such warrant was issued, shall be produced.

The extradition of fugitives under the provisions of this Treaty shall be carried out in the United States and in the Republic of Chile, respectively, in conformity with the laws regulating extradition for the time being in force in the state on which the demand for surrender is made.

#### ARTICLE IV.

Where the arrest and detention of a fugitive are desired on telegraphic or other information in advance of the presentation of formal proofs, the proper course in the United States shall be to apply to a judge or other magistrate authorized to issue warrants of arrest in extradition cases and present a complaint on oath, as provided by the statutes of the United States.

When, under the provisions of this article, the arrest and detention of a fugitive are desired in the Republic of Chile, the proper course shall be to apply to the Foreign Office, which will immediately cause the necessary steps to be taken in order to secure the provisional arrest or detention of the fugitive.

The provisional detention of a fugitive shall cease and the prisoner be released if a formal requisition for his surrender, accompanied by the necessary evidence of his criminality has not been produced under the stipulations of this Treaty, within two months from the date of his provisional arrest or detention.

#### ARTICLE V.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this Treaty.

condenado, o, si el prófugo estuviere simplemente acusado del crimen, se exhibirá una copia debidamente autenticada de la orden de arresto expedida en el país donde se ha cometido el crimen, i de las declaraciones u otras pruebas que han dado mérito a dicha orden.

La extradición de prófugos en virtud de las disposiciones de este Tratado, se efectuará en los Estados Unidos i la República de Chile, respectivamente, de acuerdo con las leyes que sobre extradición estuvieren entonces vijentes en el Estado a quien se dirija la solicitud de entrega.

#### ARTÍCULO IV.

Si el arresto i detencion de un prófugo se desearan por parte telegráfico o de otro modo anticipándose a la presentación de las pruebas formales, la vía adecuada en los Estados Unidos consistirá en dirigirse a un juez u otro magistrado autorizado para librar órdenes de arresto, en causas de extradición, i, en presentar una querrela bajo de juramento, según lo disponen las leyes de los Estados Unidos.

Cuando, en virtud de las prescripciones de este artículo, el arresto i detencion de un prófugo se desearan en la República de Chile, la vía adecuada consistirá en dirigirse al Ministerio de Relaciones Exteriores, el cual dispondrá inmediatamente que se den los pasos necesarios para asegurar el arresto o detencion provisional del prófugo.

La detencion provisional del prófugo cesará i el preso será puesto en libertad si dentro de dos meses contados desde la fecha de su arresto o detencion provisionales, no se hubiere formalizado, según las estipulaciones de este Tratado, la reclamación de su entrega acompañada de las pruebas necesarias de su culpabilidad.

#### ARTÍCULO V.

Ninguna de las Partes Contratantes estará obligada a entregar a sus propios ciudadanos en virtud de las estipulaciones de este Tratado.

Proceedings.

Applications for provisional arrest.

In the United States.

In Chile.

Discharge on failure to make formal requisition within two months.

Neither party bound to deliver up its own citizens.

## ARTICLE VI.

No surrender for political offenses.

A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character.

Political offenses prior to extradition.

No person surrendered by either of the high contracting parties to the other shall be triable or tried, or be punished, for any political crime or offense, or for any act connected therewith, committed previously to his extradition.

Decision.

If any question shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the government on which the demand for surrender is made, or which may have granted the extradition, shall be final.

## ARTICLE VII.

No delivery if trial barred by limitation.

Extradition shall not be granted, in pursuance of the provisions of this Treaty if legal proceedings or the enforcement of the penalty for the act committed by the person claimed has become barred by limitation, according to the laws of the country to which the requisition is addressed.

## ARTICLE VIII.

Trial to be only for offenses for which extradited.

No person surrendered by either of the high contracting parties to the other shall, without his consent, freely granted and publicly declared by him, be triable or tried or be punished for any crime or offense committed prior to his extradition, other than that for which he was delivered up, until he shall have had an opportunity of returning to the country from which he was surrendered.

## ARTICLE IX.

Disposition of articles seized with person.

All articles seized which are in the possession of the person to be surrendered at the time of his

## ARTÍCULO VI.

No será entregado el criminal fugitivo si el delito con respecto al cual se solicita su entrega, es de carácter político, o si prueba que la reclamación de su entrega se ha formulado en realidad con el objeto de enjuiciarlo o castigarlo por un delito de carácter político.

Ninguna persona entregada por una de las Altas Partes Contratantes a la otra, podrá ser acusada o enjuiciada o castigada por algún crimen o delito políticos o por algún acto relacionado con ellos, cometido con anterioridad a su estradicción.

Dado que surriere cualquiera cuestión acerca de si un caso cae bajo las disposiciones de este artículo, será definitiva la decisión que adopten las autoridades del Gobierno a quien se ha dirigido la solicitud de entrega o que haya concedido la estradicción.

## ARTÍCULO VII.

No se concederá la estradicción en conformidad a las disposiciones de este Tratado, si los procedimientos legales o la aplicación de la pena correspondiente al hecho cometido por la persona reclamada, hubieren quedado excluidos por prescripción, de acuerdo con las leyes del país a que se ha dirigido el reclamo.

## ARTÍCULO VIII.

Ninguna persona entregada por una de las Partes Contratantes a la otra podrá, sin el consentimiento prestado por ella libre i públicamente ser acusada o enjuiciada o castigada por otro crimen o delito cometido antes de su estradicción que aquel por el cual ha sido entregada, hasta tanto que no haya tenido oportunidad para regresar al país de que ha sido estradida.

## ARTÍCULO IX.

Todos los objetos secuestrados que al tiempo de la aprehensión se hallaren en poder de la persona



apprehension, whether being the proceeds of the crime or offense charged, or being material as evidence in making proof of the crime or offense, shall, so far as practicable and in conformity with the laws of the respective countries, be given up when the extradition takes place. Nevertheless, the rights of third parties with regard to such articles shall be duly respected.

reclamada, ya sean fruto del crimen o delito imputados, o piezas que puedan servir de prueba del crimen o delito, deberán, en cuanto fuere practicable i con arreglo a las leyes de los respectivos países, entregarse al tener lugar la extradición. Sin embargo se respetarán debidamente los derechos de terceros en orden a esos objetos.

## ARTICLE X.

If the individual claimed by one of the high contracting parties, in pursuance of the present Treaty, shall also be claimed by one or several other powers on account of crimes or offenses committed within their respective jurisdictions, his extradition shall be granted to the state whose demand is first received: Provided, that the government from which extradition is sought is not bound by treaty to give preference otherwise.

## ARTÍCULO X.

Si el individuo reclamado por una de las Altas Partes Contratantes, en conformidad al presente Tratado, fuere reclamado también por una o varias otras Potencias en razón de crímenes o delitos cometidos dentro de sus respectivas jurisdicciones, su extradición se concederá al Estado cuya solicitud se haya recibido primero, siempre que el Gobierno de quien se solicite la extradición no esté sujeto por tratado a dar preferencia a otro.

Persons claimed by two or more countries.

## ARTICLE XI.

The expenses incurred in the arrest, detention, examination, and delivery of fugitives under this Treaty shall be borne by the state in whose name the extradition is sought: Provided, that the demanding government shall not be compelled to bear any expense for the services of such public officers of the government from which extradition is sought as receive a fixed salary: And, provided, that the charge for the services of such public officers as receive only fees or perquisites shall not exceed their customary fees for the acts or services performed by them had such acts or services been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

Los gastos ocasionados por el arresto, detención, exámen i entrega de los prófugos en virtud de este Tratado, serán de cargo al Estado en cuyo nombre se pida la extradición: siendo entendido que el Gobierno solicitante no estará obligado a hacer ningun desembolso por servicios de los empleados públicos del Gobierno a quien se pida la extradición, que perciben sueldo fijo: i bien entendido que el gravámen por los servicios de los empleados públicos que solo perciben derechos o emolumentos, no excederá el de sus aranceles acostumbrados en los actos o servicios ejecutados por ellos como si dichos actos o servicios lo hubieran sido en procedimientos criminales ordinarios a virtud de las leyes del país del cual son empleados.

Expenses.

## ARTICLE XII.

The present treaty shall take effect on the thirtieth day after the date of the exchange of ratifications.

## ARTÍCULO XII.

El presente Tratado empezará a rejir el trigesimo dia despues de la fecha en que se hayan canjeado

Effect.

fications, and shall not operate retroactively.

Exchange of ratifications.

The ratifications of the present Treaty shall be exchanged at Washington as soon as possible, and it shall remain in force for a period of six months after either of the contracting governments shall have given notice of a purpose to terminate it.

Signatures.

In witness whereof, the respective Plenipotentiaries have signed the above articles, both in the English and Spanish languages, and have hereunto affixed their seals.

Done in duplicate, at the city of Santiago, this 17th day of April 1900.

HENRY L. WILSON

[SEAL.]

R. ERRÁZURIZ URMINEA [SEAL.]

Ratification.

And whereas the said Treaty (as amended by the Senate of the United States) has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the City of Washington, on the twenty-seventh day of May, one thousand nine hundred and two:

Proclamation.

Now therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said Treaty to be made public, to the end that the same and every article and clause thereof, (as amended) may be observed and fulfilled in good faith by the United States and the citizens thereof.

In testimony whereof I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

Done at the City of Washington, this twenty-seventh day of

[SEAL] May in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty sixth.

THEODORE ROOSEVELT

By the President:

JOHN HAY

Secretary of State.

las ratificaciones, sino tendrá efecto retroactivo.

Las ratificaciones del presente Tratado se intercambiarán en Washington tan pronto como sea posible, y éste permanecerá en vigor hasta seis meses después de cualquiera de los Gobiernos contratantes haya notificado al otro su intención de ponerle término.

En fé de lo cual respectivos Plenipotenciarios han firmado los artículos precedentes en los idiomas inglés y español, y puesto al pie sus sellos.

Hecho por duplicado en la ciudad de Santiago, a los 17 días de abril de 1900.



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CHARGE OF THE COURT

THE COURT: Mr. Burger, members of the jury:

I am going to read to you my charge. Normally I don't like to read it. Prefer to speak, perhaps, from notes. But I have found that it is important that I read my charge to you because it may well be that -- I don't know whether it will be the case here, but it may be that you will in the course of your deliberations want me to go over a part of my charge with you and then, if I read it to you precisely as I have it written down, it is much better for me that I can tell you exactly what I have said in the course of what I am going to say. I apologize, if an apology is necessary, that I am going to read this to you.

We now come to that part of the case where the evidence is in. The lawyers have presented their arguments and you are about to exercise your final and most important role, which is to pass upon and to decide the facts, the factual issues that there are in this case.

You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence. You determine the credibility of witnesses. You resolve such conflicts as there may be in the evidence, and you draw such reasonable inferences as may be warranted

1  
2 by the testimony or the exhibits which make up the evidence  
3 in this case.

4 I will later tell you about how you should  
5 determine the credibility of witnesses.

6 I know that you have paid close attention  
7 throughout this case, and I am going to ask you now to pay  
8 even closer attention to what I am about to say, and I  
9 want to make sure you all can hear me and that I don't  
10 go too fast, because everything I'm going to say to you is  
11 important. If any of you have any trouble hearing me,  
12 please raise your hand and let me know.

13 I told you several times during the course of  
14 this case that I would tell you what the law is. I also  
15 have told you, and I want to emphasize to you again, the fact  
16 that you should draw no inferences from any rulings or any  
17 comments I have made in the course of this case so far.  
18 I hope that I have in no way conveyed to you any impression  
19 as to my thoughts about the merits of the case, who is right  
20 and who is wrong, and if in anyway you have gathered any  
21 such impression, even though I have tried not to convey  
22 such impression, please put it out of your minds com-  
23 pletely.

24 If any of you think you have acquired some notion  
25 that I leaned in favor of or against some witness, or in



1 favor of or against some lawyer, either by the way I have  
2 ruled on objections or by my demeanor, by my conduct of  
3 the trial in any way, as I say, put it out of your minds.  
4 Do not allow that to influence your sworn duty to resolve  
5 impartially the issues of fact in this case.  
6

7 Just as you must be completely impartial with  
8 respect to your determination of the facts, I must be  
9 completely impartial in my instructions to you as to what  
10 the law is.

11 No matter what has been said by any lawyer as  
12 to what the law is or ought to be, in your determination  
13 of this case you must remember that the law is what I tell  
14 you it is, and you must accept this one hundred per cent.

15 You have been sworn in as jurors in this case to  
16 try the issues presented by the allegations in the indict-  
17 ment, and to determine what the facts are as to whether  
18 the defendant has or has not been proved guilty beyond a  
19 reasonable doubt.

20 In performing your function as jurors, which is,  
21 incidentally, one of the great privileges that you enjoy  
22 as citizens of this country, you must act without fear,  
23 without favor, without prejudice or bias one way or the  
24 other, either to the government or to the defendant.

25 You must not be governed by sympathy or bias, prejudice or

by public opinion.

In this connection, the government must not be considered in any different light from any other party to a lawsuit, and counsel for the government must be considered in no different light from counsel for the defendant. The fact that the government is a party entitles it to no greater weight and no lesser weight, to no greater consideration and no lesser consideration than that afforded to any other party involved.

The defendant and the government each have a right to expect that you will carefully and impartially consider all the evidence, follow the law as I give it to you, and reach a verdict, whether for the government or for the defendant, regardless of the consequences.

I ask that you don't single out any of the instructions I am about to give you as to the law. Take all of my instructions into account, after you have heard them all.

First of all, as I have told you, but it needs to be repeated, with respect to the indictment, this is merely an accusation, merely a charge. It is in no sense evidence that the defendant is guilty of any wrongdoing. In your deliberations you must give no weight whatsoever to the fact that an indictment has been returned against



the defendant. The indictment is only a means of indicating what the charges are, what the accusations are. The sole function of the indictment, as I have indicated, is to define the charge against the defendant, the charge as to which the evidence in the case must be addressed.

I want you to keep in mind that this defendant is not on trial for any act, any conduct not alleged or charged in the indictment.

Thus, you are to give no consideration to whether or not the evidence in this case suggests that the defendant may have committed offenses for crimes which are not charged in this indictment, except for evidence relating to similar offenses committed by the defendant. As to evidence of similar crimes, I will instruct you more particularly in a short while.

I want to remind you that you are the finders of the facts. With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel or myself may have said with respect to the matters in evidence during the trial, during the course of questions and colloquy with the Court, in argument, or in summation, is not to be substituted for your own recollection of the evidence.

It is the law that a defendant does not have to

1  
2 prove his innocence and does not have to present proof of  
3 any kind. On the contrary, the defendant is presumed to be  
4 innocent of the charges in the indictment. This is a  
5 presumption which exists in his behalf, in his favor, at  
6 the outset of the trial, continues through the trial and  
7 is a presumption that still continues and you will take  
8 with you when you go into the juryroom to begin your  
9 deliberations.

10 This presumption of innocence is sufficient to  
11 acquit, to render a verdict of acquittal, unless you  
12 members of the jury are satisfied beyond a reasonable doubt  
13 of the guilt of the defendant on all the evidence in this  
14 case.

15 Now, you have heard a lot about the phrase  
16 beyond a reasonable doubt, and this is basic. What does  
17 it mean? When we speak of a reasonable doubt we mean,  
18 as the words themselves indicate, a doubt founded on  
19 reason and which arises out of the evidence in this case  
20 or the lack of evidence. It is not a vague, speculative,  
21 imaginary doubt. It is a reasonable doubt. It is one  
22 that appeals to your judgment, to your commonsense, to your  
23 experience. It is not an excuse to avoid an unpleasant duty.  
24 It is not a vehicle for extending sympathy to a defendant.  
25 A reasonable doubt is such a doubt as would cause prudent



people to hesitate before acting in matters of substantial importance to themselves.

Putting it another way, if you are confronted with an important decision and after reviewing all the factors that are pertinent, if then you are beset with uncertainty, you are unsure of your judgment, then you have a reasonable doubt.

Conversely, on the other hand, if after taking into account all the factors that pertain to the problem you have no uncertainty and no reservations about your judgment, then you have no reasonable doubt.

It is not necessary for the government to prove the guilt of the defendant to a mathematical certainty or beyond all possible doubt. If that were the rule, few men or women, however guilty they might be, would be convicted. The reason is that in this world of ours it is practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough if proof that a defendant is guilty is established beyond a reasonable doubt, not beyond all possible doubt.

If after a fair, impartial and careful con-

sideration of all the evidence you are convinced of the guilt of the defendant, you must convict him. If, on the other hand, after such a fair, impartial and careful consideration of all the evidence you have a reasonable doubt of the defendant's guilt, you must acquit him.

The indictment, and you are of course entitled to see the indictment which I will explain to you a little later, names 14 defendants other than the defendant on trial before you. He is named in the indictment as Rafael Lira. He is the only person whose guilt or innocence you must announce in your verdict, although, as I will explain to you in a moment, in considering his guilt or innocence, you may have to determine the nature of the participation, if any, of others. In the determination of innocence or guilt, you must bear in mind that guilt is personal. The guilt or innocence of the defendant on trial before you must be determined separately with respect to him solely on the evidence presented against him or the lack of evidence. The case against this defendant stands or falls upon the proof or the lack of proof of the charges against him, not against somebody else.

One of the issues to be determined in this case is whether Rafael Mellafe-Campos is the Rafael Lira who has been named in the indictment in this case. Although



the indictment names as a defendant Rafael Lira, the government concedes that the defendant who has appeared here is named Rafael Mellafe-Campos. In order to convict the defendant you need not find that his real name is Rafael Lira. In order to find the defendant guilty, however, you must find beyond a reasonable doubt that the evidence you have heard refers to the defendant who is before you.

Now, let us turn to the conspiracy charge in the indictment. As I have mentioned, it names a number of defendants including one Rafael Lira. The indictment charges, and I am going to summarize it -- and perhaps I ought to cover this point now: if you wish to have the indictment in the juryroom, Mr. Burger, you should request it of me and I will see to it that it is delivered to you. You are entitled to have a copy of it.

The indictment names a number of people and charges that these people unlawfully, intentionally and knowingly combined, conspired and confederated and agreed together and with each other to violate certain sections of the narcotics laws of the United States.

First of all, the indictment says that the conspiracy began on or about the 1st day of July, 1970, and continued up to and including the date of the filing of this indictment, which was in May, 1973.

MR. NESLAND: August 3, 1973, your Honor.

THE COURT: August 3, 1973.

Then the indictment goes on to say that it was part of the conspiracy that prior to May 1, 1971, the defendants unlawfully, wilfully and knowingly and fraudulently were to import and bring into the United States large amounts of narcotic drugs from Ecuador, Peru, and other countries. It was further a part of the conspiracy that prior to May 1, 1971, the defendants unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation and concealment and sale of a quantity of narcotic drugs after the said narcotic drugs had been imported and brought into the United States contrary to law.

It is further a part of said conspiracy that on or after May 1, 1971, the defendants unlawfully, wilfully and knowingly would import into the United States from places outside thereof, to wit, Ecuador, Peru, Chile and France certain narcotic drugs in violation of the United States narcotic laws.

Among the means by which the defendants would and did carry out the aforesaid conspiracy were that certain named defendants, all diplomats from Bolivia, serving in consular posts in New York and Miami, were to bring cocaine



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2 into the United States using their diplomatic passports,  
3 and that these diplomats would travel to Ecuador, Peru,  
4 Chile and France to pick up cocaine and did so with  
5 approximately 225 kilograms of cocaine and brought the  
6 cocaine into the United States.

7 Finally, the said diplomats met with various  
8 named defendants, including Rafael Mellafe, from Santiago,  
9 Chile.

10 The indictment then goes on to allege certain  
11 overt acts, and I will come to those in a moment.

12 Now, before you may convict the defendant of the  
13 conspiracy charged in this indictment, there are three  
14 essential elements which must be established beyond a  
15 reasonable doubt.

16 First: you must find the existence of the  
17 conspiracy charged, that is, in plain language, an agreement  
18 existed to violate those provisions of law which prohibit  
19 the distribution of cocaine.

20 Second: you must find that the particular  
21 defendant whose guilt or innocence you are considering  
22 knowingly and wilfully associated himself with the con-  
23 spiracy; and finally,

24 Third: you must find that one of the conspirators  
25 committed at least one of the overt acts set forth in

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the indictment. I will come back to the overt acts in a moment.

If the government fails to establish each of these three central elements beyond a reasonable doubt, you must acquit the defendant. If the government succeeds, then your duty is to convict him.



2           Going back to these three elements; first the  
3 existence of the conspiracy.

4           The gist of the crime of conspiracy is the un-  
5 lawful combination or agreement to violate the law. Whether  
6 or not the defendants accomplished what it is alleged they  
7 conspired to do is immaterial to the question of their  
8 guilt or innocence.

9           A conspiracy has sometimes been called a partner-  
10 ship for criminal purposes in which each member becomes  
11 the agent of every other member.

12           I think I should have named the defendants named  
13 here in the indictment as part of the conspiracy and I  
14 will do so at this point.

15           Jaime Mendoza, Jorge Saravia, Jose Kenneth  
16 Penaranda, Jorge Baro, Sergio Machin, Alberto Lopez, a/k/a  
17 El Viejo, Enrique Barrera, a/k/a Manolo, Manuel Abdo  
18 Chacon, a/k/a Manuel Garcia, a/k/a Manolito, Gilbert  
19 Bornsztejn, a/k/a El Gordo, Milton Grijalva, Rafael Lira,  
20 Jose Alhambra, a/k/a Pepe, John Doe, a/k/a Rolando, John  
21 Doe, a/k/a Christian, a/k/a El Flaco, John Doe, a/k/a El  
22 Chino, John Doe, a/k/a Gonzalez and John Doe, a/k/a Roberto.

23           The indictment goes on to refer to others to the  
24 grand jury known and unknown.  
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1 gt:mg 2

2 To establish a conspiracy, the Government is not  
3 required to show that two or more persons have sat around  
4 a table and entered into a solemn compact orally or in  
5 writing stating that they have formed a conspiracy to  
6 violate the law, setting forth details of the plans, the  
7 means by which the unlawful project is to be carried out  
8 or the part to be played by each conspirator.

9 Indeed, it would be extraordinary if there were  
10 such a formal document or specific oral agreement.

11 Your common sense will tell you that when men,  
12 in fact, undertake to enter into a criminal conspiracy,  
13 much is left to unexpressed understanding. Conspirators  
14 do not usually reduce their agreements to writing or  
15 acknowledge their agreements before a notary public, nor  
16 do they publicly broadcast their plans.

17 From its very nature, a conspiracy is almost in-  
18 variably secret in its origin and execution.

19 It is sufficient if two or more persons in any  
20 manner through any contrivance, impliedly or tacitly,  
21 come to a common understanding to violate the law.

22 Express language or specific words are not re-  
23 quired to indicate assent or attachment to a conspiracy,  
24 nor is it required that you find that all the co-conspira-  
25 tors alleged in the indictment joined in the conspiracy



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2 in order to find that a conspiracy existed.

3 You need only find that one of the defendants  
4 entered into an unlawful agreement with one or more other  
5 persons in order to find that a conspiracy existed.

6 In determining whether there has been an unlawful  
7 agreement, you may judge acts and conduct of the alleged  
8 co-conspirators which are done to carry out the alleged  
9 criminal purpose.

10 Usually the only evidence available is that  
11 of disconnected acts which, however, when taken together in con-  
12 nection with each other, show that there was a conspiracy to  
13 secure a particular result as satisfactorily and conclusively  
14 as more direct proof.

15 The offense is complete when the unlawful agree-  
16 ment is made and any one overt act to effect the object  
17 of the conspiracy is thereafter committed by at least  
18 one of the co-conspirators.

19 Proof concerning the accomplishment of the ob-  
20 jects of a conspiracy may be evidence of the existence of  
21 the conspiracy itself.

22 Success of the venture, if you believe it was  
23 successful, may be proof of the existence of the agreement.

24 In determining whether the conspiracy charged  
25 in this indictment actually existed, you may consider the

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2 evidence of the acts and conduct of the alleged conspira-  
3 tors as a whole and the reasonable inferences to be drawn  
4 from such evidence.

5 If upon such consideration of the evidence, you  
6 find beyond a reasonable doubt that the minds of at least  
7 two of the alleged conspirators met in an understanding way  
8 and that they agreed to work together in furtherance of  
9 the unlawful scheme alleged in the indictment, then proof  
10 of the existence of the conspiracy is complete.

11 Turning to the second element, the membership  
12 of this defendant in the conspiracy; if you **do** conclude  
13 that a conspiracy as charged existed, you must next deter-  
14 mine whether the defendant on trial was a member, that  
15 is, whether he participated in the conspiracy with knowl-  
16 edge of its unlawful purposes and in furtherance of its  
17 unlawful objectives.

18 To find that the defendant was a participant in  
19 a conspiracy, you must find that he knowingly and inten-  
20 tionally participated therein.

21 Of course, mere knowledge by the defendant of the  
22 existence of a conspiracy or of the illegal acts on the  
23 part of an alleged conspirator or mere association with  
24 one of the conspirators or one or more of the conspirators  
25 is not sufficient to establish his membership in the



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2 conspiracy.

3 The Government must establish beyond a reasonable  
4 doubt that the defendant, aware of the conspiracy's basic  
5 purposes and objects, entered into the conspiracy with a  
6 specific criminal intent; that is, with a purpose to violate  
7 the law.

8 So if a defendant, with an understanding of the  
9 unlawful character of the conspiracy, intentionally engages,  
10 advises or assists for the purposes of furthering the il-  
11 legal undertaking, he thereby becomes a knowing and wilful  
12 participant, a conspirator.

13 In determining whether the defendant was a member  
14 of the alleged conspiracy, you may consider all of the  
15 evidence before you.

16 The guilt of a conspirator is not governed by the  
17 extent or duration of his participation in a conspiracy or  
18 whether he had knowledge of all of its operations.

19 Even if one joins a conspiracy after it is formed  
20 and is engaged in it to a degree more limited than that  
21 of other co-conspirators, he is equally culpable so long as  
22 he was a co-conspirator.

23 Each member of a conspiracy may, and generally  
24 does, perform separate and distinct acts at different places  
25 and times. Thus, some conspirators may play major roles

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2 while others play minor parts.

3 In other words, it is not required that a person  
4 be a member of a conspiracy from its very start. He may  
5 join it at any point during its progress and be held re-  
6 sponsible for all that has been done before he joined  
7 and all that may be done thereafter during its existence  
8 and while he remains a member.

9 It is not required that all of the co-conspirators  
10 know each other. They may not even have associated  
11 together previously; indeed, it may be that a defendant  
12 may know only one other member of the conspiracy, but if  
13 he enters into an unlawful agreement with that other mem-  
14 ber of the conspiracy, he becomes a party thereto.

15 The question is: Did the defendant join one or  
16 more others in the conspiracy alleged with awareness of at  
17 least some of its basic purposes and aims? If so, then  
18 the law treats him as a full member of a conspiracy and he  
19 becomes liable for the past and future acts of all the  
20 other conspirators.

21 Simply stated, using the partnership analogy again,  
22 by becoming a partner, he assumes all the liabilities of  
23 the partnership, including those that occurred before he  
24 became a member. Thus, if you find that the defendant is  
25 a co-conspirator, having previously found that a conspiracy



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2 existed, then however limited his role in furthering the  
3 objectives of the conspiracy, he is responsible for all  
4 that was done in furtherance thereof before and during its  
5 continuance.

6 In determining whether or not there was a con-  
7 spiracy, and if so, whether the defendant was a part of  
8 it, you must consider the knowledge and intent of the in-  
9 dividuals concerned.

10 Knowledge and intent exist in the mind. Since it  
11 is not possible to look into a man's mind to see what went  
12 on, the only way you have for arriving at a decision in  
13 these questions is for you to take into consideration all  
14 the facts and circumstances shown by the evidence and to  
15 determine from all such facts and circumstances whether  
16 the requisite knowledge and intent were present at the  
17 time in question.

18 Direct proof is unnecessary. Knowledge and in-  
19 tent may be inferred from all the surrounding circumstances.

20 Assuming that you have found that the alleged  
21 conspiracy existed and that the defendant was a member of  
22 that conspiracy, then finally, the third question for you  
23 to consider is whether the Government has established beyond  
24 a **reasonable** doubt that at least one of the overt acts  
25 charged in the indictment was committed by at least one of

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2 the conspirators in furtherance of the conspiracy.

3 An overt act is any step, action or conduct which  
4 is taken to achieve, accomplish or further the objective  
5 of the conspiracy.

6 The purpose of requiring proof of at least one  
7 overt act is that while people might conspire and agree  
8 to violate the law, they may change their minds and do  
9 nothing to carry it into effect, in which event there is  
10 no crime.

11 The overt act need be neither a criminal act nor  
12 the very crime which is the object of a conspiracy. It  
13 need not be committed by the particular defendant before  
14 you.

15 I am going to ask the clerk to read the overt acts  
16 in the indictment.

17 OVERT ACTS

18 In pursuance of said conspiracy and to effect  
19 the objects thereof, the following overt acts were committed  
20 in the Southern District of New York and elsewhere:

21 1. In or about October or November, 1970,  
22 defendants Jorge Saravia, Jorge Baro and Jaime Mendoza  
23 left New York City for Guayaquil, Ecuador.

24 2. In or about October or November of 1970  
25 defendants Jorge Saravia, Jorge Baro and Jaime Mendoza



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2 delivered approximately 10 kilograms of cocaine to defendant  
3 Enrique Barrera in the vicinity of West 87th Street and  
4 West End Avenue, New York, New York.

5 3. In or about January, 1971 defendants Jorge  
6 Baro and Jaime Mendoza left New York City for Guayaquil,  
7 Ecuador.

8 4. In or about January 1971 defendants Jorge  
9 Baro and Jaime Mendoza delivered approximately 10 kilograms  
10 of cocaine to defendant Enrique Barrera in the vicinity  
11 of West 87th Street and West End Avenue, New York, New York.

12 5. In or about December 1970 or January 1971,  
13 defendants Jorge Baro and Jaime Mendoza delivered 10 kilo-  
14 grams of cocaine to defendant Enrique Barrera in New York,  
15 New York.

16 6. In or about May, 1971, defendant Jorge Baro  
17 delivered 10 kilograms of cocaine to defendant Sergio  
18 Machin in the vicinity of West 87th Street and West End  
19 Avenue, New York, New York.

20 7. In or about July, 1971 defendant Jorge Baro  
21 and Jaime Mendoza departed New York City for Paris, France.

22 8. In or about July 1971 defendants Jorge Baro  
23 and Jaime Mendoza delivered approximately 50 kilograms  
24 of cocaine to defendant Enrique Barrera in the vicinity  
25 of 1st Avenue and East 69th Street, New York, New York.

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2 9. In or about July or August 1971 defendants  
3 Jorge Baro, Jorge Saravia and Jose Kenneth Penaranda arrived  
4 in Santiago, Chile.

5 10. In or about July or August 1971, defendants  
6 Jorge Baro, Jorge Saravia and Jose Kenneth Penaranda, Alberto  
7 Lopez, also known as El Viejo, John Doe, also known as  
8 Christian, also known as El Flaco and Rafael Lira met in  
9 Santiago, Chile.

10 11. In or about July or August of 1971, defend-  
11 ants Jorge Baro, Jorge Saravia and Jose Kenneth Penaranda  
12 delivered 15 kilograms of cocaine to defendant Enrique  
13 Barrera in the vicinity of East 59th Street and First Avenue  
14 in New York, New York.

15 12. In or about September 1971 defendant Jorge  
16 Baro departed New York City for Paris, France with \$200,000.

17 13. In or about September 1971 defendants Jorge  
18 Baro, Jorge Saravia and Jose Kenneth Penaranda delivered  
19 \$200,000 to defendant John Doe, a/k/a Gonzalez in Paris,  
20 France.

21 14. On or about March 31, 1973 defendant Alberto  
22 Lopez, a/k/a El Viejo arrived at Howard Johnsons in Secaucus,  
23 New Jersey.

24 15. In or about April 1973 defendant Alberto  
25 Lopez, a/k/a El Viejo, delivered \$35,000 to defendant Jorge



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2 Baro in Miami, Florida.

3 16. On or about June 3, 1973, defendant Alberto  
4 Lopez, a/k/a El Viejo, arrived at John F. Kennedy Airport  
5 in New York City.

6 17. On or about June 5th or 6th, 1973, defendant  
7 Alberto Lopez, a/k/a El Viejo, arrived in Miami, Florida  
8 with \$20,000

9 18. On or about July 2, 1973, defendant Jorge  
10 Baro delivered \$55,000 to defendant Milton Grijalva in  
11 Guayaquil, Ecuador.

12 19. On or about July 3, 1973, defendant Milton  
13 Grijalva delivered 10 kilograms of cocaine to the defend-  
14 ant Jorge Baro in Guayaquil, Ecuador.

15 20. On or about July 4, 1973, defendant Jorge  
16 Baro arrived in the vicinity of the Holiday Inn, West  
17 New York, New Jersey, with 10 kilograms of cocaine.

18 21. On or about July 4, 1973, defendant Alberto  
19 Lopez, a/k/a El Viejo, arrived in the vicinity of the  
20 Holiday Inn, West New York, New Jersey.

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2 Remember, the government is not required to  
3 prove each of the overt acts as alleged in the indict-  
4 ment. It is sufficient if it proves the commission of  
5 at least one of the acts in the Southern District of  
6 New York, which includes the City of New York, at or  
7 about the time alleged. The overt acts do not have to  
8 occur at the precise time or place as alleged.

9 I have mentioned the phrase unlawfully, wilfully  
10 and knowingly, which is stated in the complaint. This  
11 means that you must be satisfied beyond a reasonable doubt  
12 that the defendant knew what he was doing and that he  
13 did it deliberately and voluntarily, as opposed to  
14 mistakenly or accidentally or as a result of some coercion.

15 Of course, it is not necessary that a defendant  
16 knew he was violating a particular law. Rather, it is  
17 sufficient if you are convinced beyond a reasonable doubt  
18 that he was aware of the general unlawful nature of the  
19 acts.

20 The indictment charges that the conspiracy  
21 existed from on or about the 1st day of July, 1970, and  
22 continuously thereafter up to and including the date of  
23 the filing of the indictment, which was August 3, 1973.  
24 It is not essential that the government prove that the  
25 conspiracy started and ended on those specific dates.



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2 It is sufficient if you find that in fact a conspiracy  
3 was formed and existed for some time within the period  
4 set forth in the indictment and that at least one of the  
5 overt acts was committed in furtherance thereof within  
6 that period.

7 A conspiracy, once formed, is presumed to have  
8 continued until its objectives are accomplished, or until  
9 there is an affirmative act of termination by its members,  
10 or until it is otherwise terminated as, for example, by an  
11 arrest. Also, once a person is found to be a member of the  
12 conspiracy he is presumed to continue his membership until  
13 its termination, unless there is affirmative proof offered  
14 of withdrawal or disassociation.

15 The law permits a defendant, at his own request,  
16 to testify on his own behalf. The testimony of this  
17 defendant is before you. You must determine how far it  
18 is credible. The deep personal interest which every  
19 defendant has in the result of his case should be con-  
20 sidered in determining the credibility of his testimony.

21 You are instructed that that interest creates  
22 a motive for false testimony; that the greater the interest,  
23 the stronger is the temptation; and that the interest  
24 of the defendant is of a character possessed by no other  
25 witness and is, therefore, a matter which may seriously

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2 affect the credence that should be given to his testimony.

3           Some of the government witnesses, Jorge Baro,  
4 Jaime Mendoza, Jose Kenneth Penaranda and Jorge Saravia,  
5 were admitted participants in the crimes charged in the  
6 indictment. The government frequently must use such  
7 testimony because otherwise it would be difficult or  
8 impossible to detect or prosecute wrongdoers.

9           The testimony of an accomplice is not to be  
10 rejected unless the jury thinks it has no weight. Like  
11 any other fact, it is to be taken up and dealt with by the  
12 jury -- by you, who are the triers of the facts. If  
13 accomplices could not be used, there are many cases where  
14 there is real guilt and where convictions should be had,  
15 where convictions would not be attainable.

16           The testimony of these government informers must  
17 be examined and weighed by you with very great care, perhaps  
18 more so than the testimony of an ordinary witness, bearing  
19 in mind that their testimony may have been affected by  
20 interest.

21           In substance, an informer who testifies and is  
22 told by the government that he will obtain personal  
23 advantage, such as that his cooperation with the government  
24 will be brought to the attention of the sentencing judge,  
25 such a person's testimony must be scrutinized by you



with caution.

Also, I instruct you that it is the rule in federal courts that defendants may be convicted on the uncorroborated testimony of a single accomplice alone.

How do you determine the truth and how do you appraise the credibility of witnesses? Well, you use your own plain, every-day common sense.

You have seen the witnesses; you have observed the manner of their testifying. Whatever credit you may give them must be determined by their conduct, by their manner of testifying, and by their relationship or interest in the outcome. In other words, you will use your common sense and your everyday experience. You may, of course, as I have indicated, take into consideration the interest of a witness. An interested witness is not necessarily unworthy of belief. It is a factor, however, which you may consider in determining the weight and credibility to be given to his testimony.

If you believe any witness has wilfully testified falsely to any material fact, you may disregard all of his testimony or accept such part of it as you believe worthy of belief or as it appeals to your reason or judgment.

A witness may be discredited or impeached

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2 by contradictory evidence or by evidence that at other  
3 times the witness has made statements which are in-  
4 consistent with his present testimony. If you believe  
5 that any witness has been impeached and thus discredited,  
6 it is your exclusive province to give the testimony of  
7 that witness such credibility, if any, as you may think  
8 it deserves.

9 Evidence that a witness has been guilty of  
10 criminal acts in the past, based on his own admission  
11 may be considered by you in determining the witness's  
12 credibility. This is not to say that a person who admits  
13 prior criminal acts is deemed incapable of telling the truth.  
14 Prior criminal acts may be considered by you when you  
15 determine his credibility. Admissions of the defendant,  
16 if any, may be effective proof and constitute evidence  
17 against him. Accordingly, you are entitled to give  
18 weight to any admissions made by the defendant in this  
19 case.

20 You have heard the witness Nicodemus Olate  
21 testify that he engaged in negotiations and transactions  
22 with Christian Alvear and others to import cocaine into  
23 the United States. You may consider testimony that  
24 the defendant here engaged in narcotics transactions on  
25 other occasions with Christian Alvear, who is also named



as a defendant in this case, and with others as tending to show that the defendant was engaged in a conspiracy with Christian Alvear, as is alleged in this case.

Under your oath as jurors you cannot allow a consideration of the punishment which may be inflicted upon the defendant if convicted, to influence your verdict in any way or in any sense enter into your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of the evidence and the law as I have given it to you.

You are to decide the case upon the evidence and the evidence alone and you must not be influenced by any assumption, conjecture or sympathy or any inference not warranted by the facts until proven to your satisfaction.

If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal. But, on the other hand, if you should find that the law has been violated beyond a reasonable doubt, as charged in the indictment, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.





Now, as I conclude I want to tell you about some procedural matters. If you find during your deliberations at any time that you would like to see the indictment or hear or have read to you any of the testimony, or any part of my charge, Mr. Burger will send me a note which he will give to the marshal who will bring it to me setting out just exactly what you want.

If you want any of the exhibits, write me a note as to what you want, and they will be taken into the juryroom.

Remember that your verdict must be unanimous. Either all of you vote in favor of conviction or you vote in favor of a not guilty verdict.

Gentlemen?

MR. NESLAND: The government has nothing to add, your Honor.

MR. CORBETT: The defense has nothing to add, Judge.

(Marshals sworn, and the two alternate jurors were excused.)

(The jury retired to deliberate at 3.30 p.m.)

(Recess.)

(The following occurred at 4.00 p.m.)

THE COURT: On the record. I have a note from the jury which reads as follows: